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Testimony before the
Commerce Committee, Subcommittee on Energy and Power
U.S. House of Representatives
May 9, 1997

Mr. Chairman, members of the subcommittee, on behalf of my fellow commissioners Robert Gee and Judy Walsh, I would like to welcome you to Texas. We are glad you chose to have one of your hearings in Texas. Texas is, after all, the state that generates and consumes the most electricity. Texas is the state where the first piece of federal legislation implementing electric power industry competition -- PURPA -- planted its deepest roots, resulting in largest percentage of non-utility power generation in the nation. Texas is the state that was generally exempted from the FERC's wholesale jurisdiction in the second piece of federal legislation implementing competition -- the 1992 Energy Policy Act -- but where wholesale transmission open access was implemented even before the FERC. Texas has the nation's first up-and-running transmission grid Independent System Operator, keeping watch over the reliability and the fairness of open access to our robust wholesale marketplace. Our retail rates are near the national average, but our retail bills are high, so what happens in the electric power industry is of keen importance.

Power generation and power marketing are not monopolies. And where the marketplace can work, we should let it -- as we are already doing at the wholesale level. But we need many buyers and sellers to make the market work over the long term, and that is why competition at the retail level will, without question, be good for Texas. Our Governor thinks so, too. This past Monday, he offered the Texas Legislature legislation that, if passed, will bring full customer

choice for most Texas electric customers on September 1, 2001. A copy of that bill is attached for your review, along with a summary of its key features.

Individual customer choice in electric markets will be good for Texans -- and for all Americans -- for several reasons:

- Competitive markets produce more efficient, cost-effective outcomes;
- Competition produces product diversification and innovation, which will increase customer satisfaction;
- Many customers want to be able to choose their electric providers, products and services with the same latitude they enjoy when purchasing cars, groceries, phone service; and,
- Competitive markets allocate risk more fairly -- among market participants -- than does regulation -- which places the risk on the customer.

In 1995, the Texas Legislature enacted legislation that required competition in the wholesale power market beginning in the fall of 1995. Unlike the rest of the nation, the bulk of our electric transmission system is regulated not by the FERC, but by Texas' Public Utility Commission. Our transmission open access rules, which parallel FERC's Order 888, ensure that a robust wholesale electric market develops with full, comparable, non-discriminatory transmission services available to all electric generators and purchasers. And over the past year, we have seen clear evidence that competition is benefiting Texas customers -- more electricity is available at lower prices, independent power producers are building new merchant power plants, and we are seeing new long-term wholesale contracts with much lower prices replace expiring wholesale contracts. This is setting the stage for a broader competitive environment to work -- and work well.

There are costs, as well as benefits, of moving to competition. But based on the track records established in the deregulation of the trucking, natural gas, telephone and airline industries, I see most of these costs as transitional issues, rather than long-lasting concerns. In the case of electric utility deregulation, one major challenge is to handle the potentially strandable investments that utilities made in past years to serve existing and future customers. When they commit to making the change to a fully competitive open access environment, utilities should be allowed to recover these costs. A second major transitional challenge will be the natural reluctance of institutions and individuals to change -- most utilities, and their employees, do not want to suffer the dislocations and real costs of breaking their integrated operations into unbundled business units, and some customers dread the prospect of having to suffer through even more advertising and junk mail to make yet another choice.

When it comes to a diverse marketplace, we have everything in Texas -- municipal and state and federal regulation; utility and non-utility power suppliers; a broad array of public power utilities; and power generated by a mix of natural gas, lignite, coal, nuclear and renewable generation plants, serving a retail market that collects over \$16 billion per year in revenues. Texas is a microcosm of the country in this regard, and, if enacted, our state's legislation could well provide a good model for others.

I am hopeful that federal legislation promoting customer choice will respect the policy choices and the timelines adopted by states that have already acted, or are getting ready to act, to adopt electric customer choice. I would hope that federal legislation would preserve each state's ability to structure electric competition in ways that suit the state's needs best.

In the case of Texas, one notable challenge exists with utilities which overlap state boundaries. Such utilities could be disadvantaged if Texas goes to full retail access earlier than

our neighboring states -- they would face the challenge of opening the door to competition in their Texas marketplace without the ability to compete for customers in a neighboring state which has not opened its markets.

In closing, when you compare Texas' current proposed legislation for electric deregulation and retail access to that proposed by Chairman Schaefer, you will see the same underlying faith in the market to do a better job than regulation in this essential industry. The market can work, and it should be allowed to. A well-structured transition to a full competitive electric market will be good for Texas and the nation.

Once again, welcome to Texas.

SUMMARY OF ELECTRIC COMPETITION BILL

This bill attempts to fairly balance the interests of each of the three groups of stakeholders

Customers:

Unrestricted customer choice of electric supplier on September 1, 2001, except for customers of muni and co-op utilities, which have option to choose date for customer choice

10 percent reduction in base rates over the next three years for residential customers

4 percent reduction in basic rates over the next three years for small business customers

Base freeze until September 1, 2001 for industrial customers

Creation of a competitive electric power market for the long-term

Adoption of an expanded customer protections

Strengthened electric service reliability standards

Guarantee that utility will not overrecover stranded investment in generation plant

Provision to ensure that customers of low-cost utilities benefit from historic provider's low costs

Utilities:

Full recovery of stranded investment in generation plant at market returns

Four and one-half year transition period to prepare business for competitive environment

Option to have no further retail rate cases before regulators

Guarantee that wholesale market will not be broadened to include new classes of customers in the interim

Option for co-ops and munis to select date of customer choice for their retail customers

Approval of voluntary agreements by overlapping utilities to split service areas

Streamlined cost/revenue tracking process for stranded investment mitigation proceeding

Flexibility in approach in defining levels of stranded investment

Ability to securitize some amount of stranded investment up front

Ability to shift some limited amount of ongoing depreciation away from T&D to generation during the freeze period

Ability to collect remaining stranded cost after end of freeze period

Competitors:

Ability to serve all retail loads on September 1, 2001

Clear provisions in the law to facilitate delivery of power to customers under non-discriminatory open access terms, conditions and rates.

Requirement for utilities to unbundle competitive and non-competitive functions, to create a level playing field

Protections against abuse of market power by incumbent utilities

Transmission planning provisions to ensure a robust electric delivery system

1 By _____ .B. No. _____

2 Substitute the following for .B No. _____:

3 By _____ C.S. .B. No. _____

4

5

6

A BILL TO BE ENTITLED

7

AN ACT

8 relating to the powers and duties of the Public Utility Commission of Texas.

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

11

12 SECTION 1. Section 1.002, Public Utility Regulatory Act of 1995 (Article 1446c-0,
13 Vernon's Texas Civil Statutes), is amended to read as follows:

14 Sec. 1.002. LEGISLATIVE POLICY AND PURPOSE. (a) This Act is enacted to
15 protect the public interest inherent in the rates and services of public utilities. The legislature
16 finds that traditionally public utilities are by definition monopolies in the areas they serve;
17 that therefore the normal forces of competition which operate to regulate prices in a free
18 enterprise society do not operate; and that therefore utility rates, operations, and services are
19 regulated by public agencies with the objective that this regulation shall operate as a
20 substitute for competition. The purpose of this Act is to establish a comprehensive
21 regulatory system which is adequate to the task of regulating public utilities as defined by
22 this Act, to assure rates, operations, and services which are just and reasonable to the
23 consumers and to the utilities.

24 (b) The commission shall ensure adequate customer service and protection, promote
25 public awareness of changes in the electric and telecommunications markets, provide
26 customers with information necessary to make informed choices about available options, and
27 ensure that customers have an adequate understanding of their rights.

28

1 SECTION 2. Section 1.003, Public Utility Regulatory Act of 1995 (Article 1446c-0,
2 Vernon's Texas Civil Statutes), is amended by amending Subsection (14) and adding
3 Subsection (19) to read as follows:

4 (14) "Rate" means and includes every compensation, tariff, charge, fare, toll, rental,
5 and classification, or any of them demanded, observed, charged, or collected whether directly
6 or indirectly by any public utility for any service, product, or commodity described in the
7 definition of "utility" in Section 2.0011 [~~2.001~~] or 3.002 of this Act and any rules,
8 regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll,
9 rental, or classification.

10 (19) "Alternative dispute resolution" includes:

11 (A) a procedure described by Chapter 154, Civil Practice and Remedies
12 Code; and

13 (B) a combination of the procedures described by Chapter 154, Civil Practice
14 and Remedies Code.

15
16 SECTION 3. Section 1.004, Public Utility Regulatory Act of 1995 (Article 1446c-0,
17 Vernon's Texas Civil Statutes), is amended to read as follows:

18 Sec. 1.004. DEFINITIONS IN TITLE. In this title:

19 (1) "Affected entity" means a business entity, including an affiliate, that furnishes
20 goods or services to rate regulated entities, affiliates, or direct competitors if the value of the
21 goods and services is equal to at least the greater of \$10,000 or 10 percent of the affiliate's
22 or entity's business. The term includes the affiliate's or entity's agent, representative,
23 attorney, employee, officer, owner, director, or partner.

24 (2) "Direct competitor" means an entity that provides services that are the same as,
25 equivalent to, or substitutable for services provided by a rate regulated entity within a
26 geographic market or submarket in this state at rates, terms, and conditions that are
27 comparable to those offered by the rate regulated entity.

1 (3) “Participated” means to have taken an action as a commission officer or
2 employee or employee of the State Office of Administrative Hearings by approving,
3 disapproving, or recommending a decision, by giving advice, or by taking similar action.

4 (4) “Particular matter” means a specific investigation, application, request for a
5 ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest,
6 or judicial or other proceeding.

7 (5) “Pecuniary interest” includes income, compensation, and payment of any kind,
8 in addition to an ownership interest, as an officer, director, partner, owner, employee,
9 attorney, consultant, or otherwise.

10 (6) “Public [~~public~~] utility” or “utility” has the meaning assigned by Section 2.0011
11 [~~2.001~~] or 3.002 of this Act.

12 (7) “Rate regulated entity” means:

13 (A) a public utility as defined by Section 2.0011 of this Act; or

14 (B) a dominant carrier as defined by Section 3.002 of this Act.

15
16 SECTION 4. Section 1.022, Public Utility Regulatory Act of 1995 (Article 1446c-0,
17 Vernon’s Texas Civil Statutes), is amended to read as follows:

18 Sec. 1.022. SUNSET PROVISION. The Public Utility Commission of Texas and
19 the Office of Public Utility Counsel are subject to Chapter 325, Government Code (Texas
20 Sunset Act). Unless continued in existence as provided by that chapter, the commission and
21 the office are abolished and this Act expires September 1, 2003 [~~2001~~].

22
23 SECTION 5. Section 1.023(d), (e), and (f), Public Utility Regulatory Act of 1995
24 (Article 1446c-0, Vernon's Texas Civil Statutes), are amended to read as follows:

25 (d) A person who is required to register as a lobbyist under Chapter 305, Government
26 Code, because of the person's activities for compensation on behalf of a profession related
27 to the operation of the commission may not serve as a member of the commission, [~~or~~] serve

1 as the public utility counsel, or be an employee of ~~[or act as the general counsel to]~~ the
2 commission.

3 (e) A person is not eligible for appointment as a public member of the commission
4 or for employment as the ~~[general counsel or]~~ executive director of the commission if:

5 (1) the person serves on the board of directors of a company that supplies
6 fuel, utility-related services, or utility-related products to regulated or unregulated electric
7 or telecommunications utilities; or

8 (2) the person or the person's spouse:

9 (A) is employed by or participates in the management of a business
10 entity or other organization regulated by the commission or receiving funds from the
11 commission;

12 (B) owns or controls, directly or indirectly, more than a 10 percent
13 interest or a pecuniary interest with a value exceeding \$10,000 in:

14 (i) a business entity or other organization regulated by the
15 commission or receiving funds from the commission; or

16 (ii) any utility competitor, utility supplier, or other entity
17 affected by a commission decision in a manner other than by the setting of rates for that class
18 of customer;

19 (C) uses or receives a substantial amount of tangible goods, services,
20 or funds from the commission, other than compensation or reimbursement authorized by law
21 for commission membership, attendance, or expenses; or

22 (D) notwithstanding Paragraph (B) of this subsection, has an interest
23 in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings at
24 the time of appointment is in a single utility, utility competitor, or utility supplier in this state
25 and the person does not disclose this information to the governor, senate, commission, or
26 other entity, as appropriate.

27 (f) Notwithstanding any other provision of this Act, a person otherwise ineligible
28 because of the application of Subsection (e)(2)(B) of this section may be appointed to the

1 commission and serve as a commissioner or may be employed as the ~~[general counsel or]~~
2 executive director if the person:

3 (1) notifies the attorney general and commission that the person is ineligible
4 because of the application of Subsection (e)(2)(B) of this section; and

5 (2) divests the person or the person's spouse of the ownership or control
6 before beginning service or employment, or within a reasonable time if the person is already
7 serving or employed at the time Subsection (e)(2)(B) of this section first applies to the
8 person.

9
10 SECTION 6. Subtitle B, Title I, Public Utility Regulatory Act of 1995 (Article
11 1446c-0, Vernon's Texas Civil Statutes), is amended by adding Sections 1.0235, 1.0241, and
12 1.0245 to read as follows:

13 Sec. 1.0235. PROHIBITION ON SEEKING ANOTHER OFFICE. A person may
14 not seek nomination or election to another civil office of this state or of the United States
15 while serving as a commissioner. If a commissioner files for nomination or election to
16 another civil office of this state or of the United States, the person's office as commissioner
17 immediately becomes vacant, and the governor shall appoint a successor.

18 Sec. 1.0241. PROHIBITED ACTIVITIES. (a) During the period of service with the
19 commission or the State Office of Administrative Hearings, a commissioner, commission
20 employee, or employee of the State Office of Administrative Hearings involved in hearing
21 utility cases may not:

22 (1) have a pecuniary interest in a rate regulated entity, direct competitor, or
23 affected entity;

24 (2) directly or indirectly own or control securities in a rate regulated entity,
25 direct competitor, or affected entity;

26 (3) accept a gift, gratuity, or entertainment from a rate regulated entity, direct
27 competitor, or affected entity; or

1 (4) directly or indirectly solicit, request from, or suggest or recommend to a
2 rate regulated entity, direct competitor, or affected entity the appointment to a position or the
3 employment of a person, including an appointment or employment that would violate
4 Chapter 572, Government Code.

5 (b) A rate regulated entity, direct competitor, or affected entity may not give or offer
6 to give a gift, gratuity, employment, or entertainment to a commissioner or a commission
7 employee.

8 (c) It is not a violation of this section if a commissioner, commission employee, or
9 employee of the State Office of Administrative Hearings, on becoming the owner of stocks,
10 bonds, or another pecuniary interest in a rate regulated entity, direct competitor, or affected
11 entity otherwise than voluntarily, informs the commission or office, as appropriate, and the
12 attorney general of the ownership and divests the ownership or interest within a reasonable
13 time.

14 (d) It is not a violation of this section if a pecuniary interest is held indirectly by
15 ownership of an interest in a retirement system, institution, or fund that in the normal course
16 of business invests in diverse securities independently of the control of the commissioner,
17 commission employee, or employee of the State Office of Administrative Hearings.

18 (e) This section does not apply to a contract for a product or service of a rate-
19 regulated entity, direct competitor, or affected entity, or for equipment for use of such a
20 product or service, when a commissioner, commission employee, or employee of the State
21 Office of Administrative Hearings is acting as a
22 consumer.

23 Sec. 1.0245. QUALIFICATIONS AND STANDARDS OF CONDUCT
24 INFORMATION. The executive director or the executive director's designee shall provide
25 to commissioners and commission employees as often as necessary information regarding
26 their:

27 (1) qualifications for office or employment under this Act; and

1 (2) responsibilities under applicable laws relating to standards of conduct for
2 state officers and employees.

3
4 SECTION 7. Sections 1.025(a) and (b), Public Utility Regulatory Act of 1995
5 (Article 1446c-0, Vernon's Texas Civil Statutes), are amended to read as follows:

6 (a) A commissioner may not within two years, and an employee of the commission
7 or an employee of the State Office of Administrative Hearings involved in hearing utility
8 cases may not, within one year after his employment with the commission or the State Office
9 of Administrative Hearings has ceased, be employed by a rate regulated entity [~~public utility~~]
10 which was in the scope of the commissioner's or employee's official responsibility while
11 the commissioner or employee was associated with the commission or the State Office of
12 Administrative Hearings.

13 (b) During the time a commissioner or employee of the commission or an employee
14 of the State Office of Administrative Hearings involved in hearing utility cases is associated
15 with the commission or the State Office of Administrative Hearings or at any time after, the
16 commissioner or employee may not represent a person, corporation, or other business entity
17 before the commission or State Office of Administrative Hearings or a court in a particular
18 matter in which the commissioner or employee participated [~~was personally involved~~] while
19 associated with the commission or State Office of Administrative Hearings or a particular
20 matter was within the commissioner's or employee's official responsibility while the
21 commissioner or employee was associated with the commission or State Office of
22 Administrative Hearings.

23
24 SECTION 8. Section 1.026(a), Public Utility Regulatory Act of 1995 (Article 1446c-
25 0, Vernon's Texas Civil Statutes), is amended to read as follows:

26 (a) It is a ground for removal from the commission if a member:

27 (1) does not have at the time of appointment the qualifications required by
28 Section 1.023 of this Act;

1 (2) does not maintain during service on the commission the qualifications
2 required by Section 1.023 of this Act;

3 (3) violates a prohibition established by Section 1.023, 1.0235, 1.0241 or
4 1.025 of this Act;

5 (4) cannot discharge the member's duties for a substantial part of the term for
6 which the member is appointed because of illness or disability; or

7 (5) is absent from more than half of the regularly scheduled commission
8 meetings that the member is eligible to attend during a calendar year unless the absence is
9 excused by majority vote of the commission.

10
11 SECTION 9. Section 1.028(a), (c), and (d), Public Utility Regulatory Act of 1995
12 (Article 1446c-0, Vernon's Texas Civil Statutes), are amended to read as follows:

13 (a) The commission shall employ an executive director[~~; a general counsel~~], and such
14 officers and other employees as it deems necessary to carry out the provisions of this Act.
15 All employees receive such compensation as is fixed by the legislature. The commission
16 shall develop and implement policies that clearly define the respective responsibilities of the
17 commission and the staff of the commission.

18 (c) The commission [~~general counsel and his~~] staff is [~~are~~] responsible for the
19 gathering of information relating to all matters within the authority of the commission.

20 (d) The duties of the commission staff [~~general counsel~~] include:

21 (1) accumulation of evidence and other information from public utilities and
22 from the accounting and technical and other staffs of the commission and from other sources
23 for the purposes specified herein;

24 (2) preparation and presentation of such evidence before the commission or
25 its appointed examiner in proceedings;

26 (3) conduct of investigations of public utilities under the jurisdiction of the
27 commission;

28 (4) preparation of proposed changes in the rules of the commission;

1 (5) preparation of recommendations that the commission undertake
2 investigation of any matter within its authority;

3 (6) preparation of recommendations and a report of such staff for inclusion
4 in the annual report of the commission;

5 (7) protection and representation of the public interest and coordination and
6 direction of the preparation and presentation of evidence from the commission staff in all
7 cases before the commission as necessary to effect the objectives and purposes stated in this
8 Act and ensure protection of the public interest; [and]

9 (8) preparation of proposed orders under Section 1.105 of this Act;

10 (9) preparation of staff reports under Section 1.106 of this Act; and

11 (10) such other activities as are reasonably necessary to enable the staff [him]
12 to perform the staff's [his] duties.

13
14 SECTION 10. Section 1.034, Public Utility Regulatory Act of 1995 (Article 1446c-
15 0, Vernon's Texas Civil Statutes), is amended to read as follows:

16 Sec. 1.034. ORDERS; TRANSCRIPT AND EXHIBITS; PUBLIC RECORDS.

17 (a) All orders of the commission shall be in writing and shall contain detailed findings of
18 the facts upon which they are passed.

19 (b) The commission shall retain a copy of the transcript and the exhibits in any
20 matter in which the commission issues an order. All files pertaining to matters which were
21 at any time pending before the commission and to records, reports, and inspections required
22 by Subtitle E of this title, Title II of this Act, and Title III of this Act shall be public records,
23 subject to the terms of Chapter 552, Government Code.

24 (c) The commission may establish a system to provide electronic access to
25 information that is stored in computer banks maintained by the commission and that is not
26 considered to be confidential by law, whether constitutional, statutory, or judicial decision.
27 The system must be reviewed and approved by the Department of Information Resources.
28 The commission may impose a fee for electronic access to the information in an amount

1 reasonable and necessary to cover the costs of payments to the Texas Public Finance
2 Authority associated with establishing the electronic access system.

3
4 SECTION 11. Section 1.0512, Public Utility Regulatory Act of 1995 (Article 1446c-
5 0, Vernon's Texas Civil Statutes), is amended to read as follows:

6 Sec. 1.0512. PROHIBITION OF EMPLOYMENT OR REPRESENTATION.

7 (a) The counsellor or ~~[may not within two years, and]~~ an employee of the office may
8 not within one year after his employment with the office has ceased ~~[,]~~ be employed by a rate
9 regulated entity ~~[public utility]~~ which was in the scope of the counsellor's or employee's
10 official responsibility while the counsellor or employee was associated with the office.

11 (b) During the time the counsellor or an employee of the office is associated with the
12 office or at any time after, the counsellor or employee may not represent a person,
13 corporation, or other business entity before the commission or State Office of Administrative
14 Hearings or a court in a particular matter in which the counsellor or employee participated
15 ~~[was personally involved]~~ while associated with the office or a particular matter that was
16 within the counsellor's or employee's official responsibility while the counsellor or employee
17 was associated with the office.

18 (b) In this section, "particular matter" has the meaning assigned by Section 1.0241
19 of this Act.

20
21 SECTION 12. Section 1.052, Public Utility Regulatory Act of 1995 (Article 1446c-0,
22 Vernon's Texas Civil Statutes), is amended to read as follows:

23 Sec. 1.052. INTEREST PROHIBITED. During the period of the counsellor's
24 employment ~~[and for a period of two years following the termination of employment]~~, it shall
25 be unlawful for any person employed as counsellor to have a direct or indirect interest in any
26 utility company regulated under this Act, to provide legal services directly or indirectly to
27 or be employed in any capacity by a utility company regulated under this Act, its parent, or
28 its subsidiary companies, corporations, or cooperatives or a utility competitor, utility

1 supplier, or other entity affected in a manner other than by the setting of rates for that class
2 of customer[; ~~but such person may otherwise engage in the private practice of law after the~~
3 ~~termination of employment as counsellor~~].

4
5 SECTION 13. Section 1.054(a), Public Utility Regulatory Act of 1995 (Article
6 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

7 (a) The Office of Public Utility Counsel:

8 (1) shall assess the impact of utility rate changes and other regulatory actions
9 on residential consumers in the State of Texas and shall be an advocate in its own name of
10 positions most advantageous to a substantial number of such consumers as determined by
11 the counsellor;

12 (2) may appear or intervene as a matter of right as a party or otherwise on
13 behalf of residential consumers, as a class, in all proceedings before the commission,
14 including a proceeding involving an alternative dispute resolution procedure;

15 (3) may appear or intervene as a matter of right as a party or otherwise on
16 behalf of small commercial consumers, as a class, in all proceedings where it is deemed by
17 the counsellor that small commercial consumers are in need of representation, including a
18 proceeding involving an alternative dispute resolution procedure;

19 (4) may initiate or intervene as a matter of right or otherwise appear in any
20 judicial proceedings involving or arising out of any action taken by an administrative agency
21 in a proceeding in which the counsellor was authorized to appear, including a proceeding
22 involving an alternative dispute resolution procedure;

23 (5) may have access as any party, other than staff, to all records gathered by
24 the commission under the authority of Subsection (a) of Section 1.203 of this Act;

25 (6) may obtain discovery of any nonprivileged matter which is relevant to the
26 subject matter involved in any proceeding or petition before the commission;

1 (7) may represent individual residential and small commercial consumers
2 with respect to their disputed complaints concerning utility services unresolved before the
3 commission; and

4 (8) may recommend legislation to the legislature which in its judgment would
5 positively affect the interests of residential and small commercial consumers.

6
7 SECTION 14. Subtitle D, Title I, Public Utility Regulatory Act of 1995 (Article
8 1446c-0, Vernon's Texas Civil Statutes), is amended by adding Sections 1.105 through 1.109
9 to read as follows:

10 Sec. 1.105. PROPOSED ORDERS. (a) The commission by rule shall adopt
11 procedures by which commission staff may issue a proposed order to resolve all or part of
12 a contested case before a hearing.

13 (b) The rules must:

14 (1) prescribe the types of cases for which a proposed order may be issued;

15 (2) prescribe any applicable deadlines for issuing the order;

16 (3) ensure that each party:

17 (A) retains the right to:

18 (i) a full hearing as provided under Sections 1.005 and 1.101
19 of this Act on issues that remain in dispute; and

20 (ii) judicial review of issues that remain in dispute under
21 Section 1.301 of this Act;

22 (B) receives a copy of the proposed order; and

23 (C) has at least 30 days after receiving the proposed order to object
24 to the adoption of all or part of the order; and

25 (4) ensure that the commission's action in considering the proposed order is
26 limited to the portions of the proposed order recommended by the parties for approval.

27 (c) A proposed order or a part of a proposed order to which a party does not object
28 becomes final with commission approval.

1 Sec. 1.106. STAFF REPORTS. (a) The commission by rule shall adopt procedures
2 by which commission staff may prepare staff reports detailing the information and evidence
3 the staff would have presented in a contested case hearing to protect and represent the public
4 interest and to effect the objectives and purposes stated in this Act.

5 (b) The rules must:

6 (1) prescribe the types of cases for which staff reports may be submitted
7 instead of staff testimony;

8 (2) prescribe any applicable deadlines for filing the staff reports with the
9 commission;

10 (3) ensure that each party:

11 (A) retains the right to:

12 (i) a full hearing as provided under Sections 1.005 and 1.101
13 of this Act on each provision in the staff report to which the party objects; and

14 (ii) judicial review of those provisions under Section 1.301
15 of this Act;

16 (B) receives a copy of a staff report; and

17 (C) has at least 30 days after receiving a staff report to respond to the
18 report or to object to the adoption of all or part of the report;

19 (4) ensure that the commission may not act on a staff report before the 45th
20 day after the date it is filed with the commission;

21 (5) authorize the commission or an administrative law judge to prescribe
22 deadlines for action on a staff report in a particular case; and

23 (6) ensure that the commission's action in considering the proposed report
24 is limited to the portions of the report recommended by the parties for approval.

25 (c) Notwithstanding any other provision of this Act, the commission staff is not
26 required to respond to a request for discovery or for information from a party to a contested
27 case while the staff is preparing a staff report relating to that case.

1 Sec. 1.107. ALTERNATIVE DISPUTE RESOLUTION. (a) The commission by
2 rule shall adopt procedures by which the commission may use an alternative dispute
3 resolution procedure to resolve a pending issue or proceeding.

4 (b) The rules must:

5 (1) provide that the commission may consider using an alternative dispute
6 resolution procedure on its own motion or at the request of a party or an administrative law
7 judge;

8 (2) require notice to each party that the commission is considering the use of
9 an alternative dispute resolution procedure;

10 (3) provide that a party that objects to the use of the procedure must file a
11 written objection with the commission not later than the 10th day after the date the party
12 receives notice under Subdivision (2) of this subsection;

13 (4) prescribe any applicable deadlines for completion of various alternative
14 dispute resolution procedures, provided that in no event may the time required to complete
15 the entire alternative dispute resolution process exceed 30 days;

16 (5) not affect the right of a utility to put into effect a changed rate on filing
17 with the commission a bond as provided for in Section 2.212 of this Act; and

18 (6) ensure that any contested case issues not resolved using an alternative
19 dispute resolution procedure are resolved by the commission in a contested case proceeding.

20 (c) The commission may use an alternative dispute resolution procedure if the
21 commission does not receive a timely objection or if the commission determines that an
22 objection does not have a reasonable basis.

23 (d) A residential or small commercial consumer who brings a complaint or other
24 action before the commission in which the value does not exceed \$10,000 may choose
25 whether to use a contested case proceeding or an alternative dispute resolution proceeding
26 to resolve the complaint or action.

1 (e) A deadline for a commission decision prescribed by another provision of this Act,
2 including Sections 2.2011, 2.211, 2.212, 3.211, 3.212, 3.2135, 3.2531, and 3.2532, is
3 suspended during the pendency of an alternative dispute resolution procedure.

4 Sec. 1.108. JURISDICTION TO ESTABLISH SERVICE QUALITY AND
5 RELIABILITY AND CUSTOMER SERVICE AND PROTECTION. The commission has
6 jurisdiction over a person required to register under Title II of this Act, except qualifying
7 facilities, or to obtain a certificate under Title III of this Act to the extent necessary to
8 establish and ensure service quality and reliability and customer service and protection.

9 Sec. 1.109. CONSUMER EDUCATION. The commission may educate and provide
10 information to:

11 (1) consumers to assist them in making an informed decision regarding electric and
12 telecommunications services; and

13 (2) providers of electric and telecommunications services relating to the providers'
14 responsibilities under state laws and regulations.

15
16 SECTION 15. Section 1.3215(e), Public Utility Regulatory Act of 1995 (Article
17 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

18 (e) Within 14 days after the date the report is issued, the executive director shall give
19 written notice of the report to the person. The notice may be given by certified mail. The
20 notice must include a brief summary of the alleged violation and a statement of the amount
21 of the recommended penalty and must inform the person that the person has a right to a
22 hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence
23 of the violation and the amount of the penalty. ~~[Before any penalty may be assessed under~~
24 ~~this section, the person against whom the penalty may be assessed shall be given 30 days~~
25 ~~after receiving from the executive director the notice of the report summarizing the alleged~~
26 ~~violation pursuant to this subsection in which to cure the violation and the person must fail~~
27 ~~to cure the alleged violation within the 30-day period. The person against whom the penalty~~
28 ~~may be assessed who claims to have cured the alleged violation shall have the burden of~~

1 ~~proving to the commission that the alleged violation was cured and was accidental or~~
2 ~~inadvertent.]~~

3
4 SECTION 16. Section 1.323, Public Utility Regulatory Act of 1995 (Article 1446c-0,
5 Vernon's Texas Civil Statutes), is amended to read as follows:

6 Sec. 1.323. PENALTY FOR VIOLATING SECTION 1.0235 OR 1.0241 [~~1.024~~] OF
7 THIS ACT. (a) Any member of the commission or any officer or director of a rate regulated
8 entity, direct competitor, or affected entity [~~public utility or affiliated interest~~] shall be
9 subject to a civil penalty of \$1,000 for each and every knowing violation of Section 1.0235
10 or 1.0241 [~~1.024~~] of this Act, such penalty to be recovered in a suit filed in a court of
11 competent jurisdiction by the attorney general on his own initiative or at the request of, in
12 the name of, and on behalf of the commission.

13 (b) Any person, other than an officer or director of a rate regulated entity, direct
14 competitor, or affected entity [~~public utility or affiliated interest~~] or a member of the
15 commission, shall be subject to a civil penalty of \$500 for each and every knowing violation
16 of Section 1.0235 or 1.0241 [~~1.024~~] of this Act, such penalty to be recovered in a suit filed
17 in a court of competent jurisdiction by the attorney general on his own initiative or at the
18 request of, in the name of, and on behalf of the commission.

19 (c) Any member, officer, or employee of the commission found in any action by a
20 preponderance of the evidence to have violated any provision of Section 1.0235 or 1.0241
21 [~~1.024~~] of this Act shall be removed from his office or employment.

22
23 SECTION 17. Section 1.401, Public Utility Regulatory Act of 1995 (Article 1446c-0,
24 Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

25 (d) Not later than January 15 of each odd-numbered year, the commission shall
26 submit to the legislature a report on complaints received from consumers during the previous
27 two years. The report must include:

28 (1) information on the number of complaints that were not resolved;

1 (2) the reasons the complaints were not resolved; and
2 (3) recommendations to correct consumer problems that the commission does
3 not have the authority to address.
4

5 SECTION 18. Sec. 2.0011(1), Public Utility Regulatory Act of 1995 (Article 1446c-
6 0, Vernon’s Texas Civil Statutes), is amended to read as follows:

7 (1) “Public utility” or “utility” means any person, corporation, river authority,
8 cooperative corporation, or any combination thereof, other than a municipal corporation, or
9 their lessees, trustees, receivers, now or hereafter owning or operating for compensation in
10 this state equipment or facilities for producing, generating, transmitting, distributing, selling,
11 or furnishing electricity in this state (hereinafter “electric utility”); provided, however, that
12 the term does not [this definition may not be construed to apply to or]include a qualifying
13 facility. The term does not include an exempt wholesale generator, a power marketer, a
14 power merchant, or a corporation as prescribed in Section 2.0012 of this Act; or any person
15 or corporation not otherwise a public utility that:
16

17 SECTION 19. Sec. 2.0011, Public Utility Regulatory Act of 1995 (Article 1446c-0,
18 Vernon’s Texas Civil Statutes), is amended by adding subsections (8) - (14) as follows:

19 (8) “Customer choice” means the freedom of a retail customer to purchase electric
20 services, either individually or on an aggregated basis with other retail customers, from the
21 provider or providers of the customer’s choice, and to choose among various fuel types,
22 energy efficiency programs, and renewable power suppliers.

23 (9) “Freeze period” means the period beginning on January 1, 1997 and
24 ending on August 31, 2001.

25 (10) “Independent System Operator” means an entity supervising the
26 collective transmission facilities of the Electric Reliability Council of Texas which is charged
27 with nondiscriminatory coordination of market transactions, systemwide transmission
28 planning and network reliability.

1 (11) “Power merchant” means a person who:
2 (A) generates or furnishes electric energy in this state for
3 compensation;
4 (B) does not own a transmission or distribution facility in this state
5 other than an essential interconnecting facility necessary to effect a sale of electricity or a
6 facility not dedicated to public use or a facility otherwise excluded from the definition of
7 “public utility” under Subtitle (1)(F) of this section; and
8 (C) does not have a certificated service area.
9 (12) “Retail competition” means open and fair competition in provision of
10 electricity to retail customers.
11 (13) “Retail customer” means the end-use customer who purchases and
12 ultimately consumes electricity.
13 (14) “Wholesale” means the sale of electricity to an electric utility,
14 municipally owned electric utility, exempt wholesale generator, or power marketer
15 exclusively for resale and not for sale or provision directly to an individual end-use customer.
16 On and after September 1, 2001, “power merchants” may also buy power at wholesale to sell
17 at wholesale or retail.

18
19 SECTION 20. Section 2.003, Public Utility Regulatory Act of 1995 (Article 1446c-0,
20 Vernon's Texas Civil Statutes), is amended to read as follows:

21 Sec. 2.003. SCOPE OF COMPETITION. Before January 15 of each odd-numbered
22 year, the commission shall report to the legislature on the scope of competition in electric
23 markets and the impact of competition and industry restructuring on customers in both
24 competitive and noncompetitive markets. The report shall include:

25 (1) an assessment of the impact of competition on the rates and availability
26 of electric services for residential and small commercial customers;

27 (2) [and] a summary of commission actions over the preceding two years that
28 reflect changes in the scope of competition in regulated electric markets;

1 (3) ~~[-The report shall also include]~~ recommendations to the legislature for
2 further legislation that the commission finds appropriate to promote the public interest in the
3 context of a partially competitive electric market; and

4 (4) a report on complaints received from consumers relating to electric
5 service or electric utilities during the previous two years that includes:

6 (A) information on the number of complaints that were not resolved;

7 (B) the reasons the complaints were not resolved; and

8 (C) recommendations to correct consumer problems that the
9 commission does not have the authority to address.

10
11 SECTION 21. Section 2.053(b), Public Utility Regulatory Act of 1995 (Article
12 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

13 (b) The commission has the following jurisdiction over exempt wholesale generators,
14 ~~[and]~~power marketers and power merchants that sell electric energy in this state:

15 (1) to require registration as provided by Subsection (c) of this section as a
16 condition of doing business in this state; [and]

17 (2) to revoke a registration for repeated violations of this Act or commission
18 rules; and

19 (3) to require the filing of reports the commission prescribes by rule.

20
21 SECTION 22. Section 2.056(b), Public Utility Regulatory Act of 1995 (Article
22 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

23 (b) The commission, with the advice and consent of the governor, shall appoint a
24 five-person interstate connection committee to investigate the most economical, reliable, and
25 efficient means to synchronously interconnect the alternating current electric facilities of the
26 electric facilities of electric utilities within the Electric Reliability Council of Texas
27 reliability area to the alternating current electric facilities of the electric facilities of electric
28 utilities within the Southwest Power Pool reliability area. The committee shall report an

1 estimate of the cost and benefit to effect the interconnection, an estimate of the time to
2 construct the interconnecting facilities, and the service territory of the utilities in which those
3 facilities will be located. The committee shall submit its report to the legislature by May 1,
4 1998 [~~September 1, 1997~~], at which time the committee shall be dissolved.

5
6 SECTION 23. Section 2.057(b), Public Utility Regulatory Act of 1995 (Article
7 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

8 (b) The commission shall adopt rules relating to the registration and reporting
9 requirements of qualifying facilities, exempt wholesale generators, power merchants and
10 power marketers. The rules must require that each qualifying facility, exempt wholesale
11 generator, power merchant and power marketer register with the commission as a condition
12 of doing business in this state. The commission may revoke a registration for repeated
13 violations of this Act or commission rules.

14
15 SECTION 24. Subtitle B, Title II, Public Utility Regulatory Act of 1995 (Article
16 1446c-0, Vernon's Texas Civil Statutes), is amended by adding Sections 2.058 and 2.059 to
17 read as follows:

18 Sec. 2.058. ELECTRIC SERVICE RELIABILITY MEASURES.

19 (a) The commission is authorized and directed to implement reliability standards
20 relating to the delivery of electricity to retail customers by electric utilities and municipally
21 owned electric utilities. The commission shall develop by rule reliability standards based on
22 one or more of the following:

23 (1) system average interruption frequency index;

24 (2) average system availability index;

25 (3) achievement of annual average response time to live answer for customer
26 telephone calls to the utility;

27 (4) such other standards that the commission finds reasonable and
28 appropriate.

1 **(b) The reliability standards shall be based upon data commonly maintained in the**
2 **electric industry, and the commission may require each electric utility and municipally**
3 **owned electric utility to supply such data on an annual basis.**

4 **(c) Annually, the commission shall compute for each electric utility and municipally**
5 **owned electric utility the score achieved with respect to each reliability standard on a three**
6 **year, rolling average basis adjusted to remove the effects of hurricanes, tornadoes, other**
7 **natural events of similar magnitude, and reasonable planned outages. If the commission**
8 **determines that an applicable score so computed is below the benchmark by more than five**
9 **percent, the commission shall issue an order stating its findings. Within ninety days after**
10 **such order, the utility shall file one of the following:**

11 **(1) information showing that there is no need for corrective action;**

12 **(2) a plan to implement procedures to correct any deficiency; or**

13 **(3) information showing that the utility has already corrected the deficiency**
14 **indicated by the score.**

15 **(d) If the commission determines at the time of its annual computation of scores that**
16 **an electric utility or municipally owned electric utility has failed to correct a deficiency that**
17 **existed at the time of the previous year's computation of scores, the commission may issue**
18 **an order requiring the utility to increase its transmission and/or distribution expenditures by**
19 **up to five percent in the account applicable to the area of deficiency, but shall not otherwise**
20 **assess administrative penalties under Sections 1.3215 or 1.322 of this Act, unless the utility**
21 **subsequently fails to increase its expenditures as ordered.**

22 **(e) All generation providers shall be obligated to comply with any operational criteria**
23 **duly established by the independent system operator.**

24 **Sec. 2.059. UTILITY JOINT ACTION AGENCIES**

25 **(a) A "joint action agency" shall be considered to have the same meaning as**
26 **contained in article 1435a, Vernon's Texas Civil Statutes. This Section shall apply to**
27 **joint action agencies who own generating facilities in Texas.**

1 (b) The purpose of this section is to permit member municipalities of joint
2 action agencies to continue to offer retail electric services at prices which are competitive
3 with other public utilities who offer service within their municipal boundaries.

4 (c) The member municipalities of joint action agencies shall have the
5 authority to sell or lease all or a portion of their generation and transmission facilities,
6 assets or property by resolution either separately or in concert with the sale of the assets
7 of the joint action agency.

8 (d) Only the board of directors of the joint action agency may authorize the
9 sale of facilities or assets of the agency.

10 (e) In connection with any sale undertaken pursuant to subsection (c), any
11 member municipality, separately or jointly with any other member municipality may enter
12 into a long-term purchased power agreement with the purchaser of the facilities of the
13 joint action agency and/or the facilities of any member municipality.

14 (f) Nothing in this section is meant to nullify the obligations of the State of
15 Texas under subsection (h) of article 1435a, Vernon's Texas Civil Statutes.

16 (g) This section shall control over any conflicting provisions in state or local
17 law.

18
19 SECTION 25. Section 2.257, Public Utility Regulatory Act of 1995 (Article 1446c-0,
20 Vernon's Texas Civil Statutes), is amended to read as follows:

21 Sec. 2.257. CONTRACTS VALID AND ENFORCEABLE. Contracts between
22 retail public utilities designating areas to be served and customers to be served by those
23 utilities, when approved by the commission, shall be valid and enforceable and shall be
24 incorporated into the appropriate areas of public convenience and necessity. To the extent
25 that such retail public utilities agree to the single certification of areas that have been
26 previously multiply certificated by the commission, such agreement shall be presumed to be
27 in the public interest.

1 SECTION 26. Title II, Public Utility Regulatory Act of 1995 (Article 1446c-
2 0, Vernon's Texas Civil Statutes) is amended by adding Subtitle G to read as follows:

3 SUBTITLE G - RATE REDUCTIONS, RETAIL COMPETITION, TARIFF FREEZE
4 PERIOD AND STRANDED COST RECOVERY.

5 Sec. 2.301. LEGISLATIVE POLICY AND PURPOSE. This subtitle is enacted to
6 protect the public interest during the transition to and in the establishment of a more fully
7 competitive electric power industry. The legislature finds that implementation on September
8 1, 2001 of a competitive retail electricity market that allows each retail customer to choose
9 the customer's provider of electricity and that encourages full and fair competition among
10 all providers of electricity is in the public interest. The legislature further finds that some
11 electric utilities and municipally owned utilities (hereinafter, in this subtitle, "electing
12 utilities") require a period of time in order to prepare for retail competition and to mitigate
13 potentially strandable investment in power generation facilities that the utility has
14 constructed to provide electric service, and utilities shall have a reasonable opportunity to
15 recover all of their net, verifiable, non-mitigable stranded investment incurred in providing
16 electric service. The legislature further finds that the education of utility customers about
17 anticipated changes in the provision of retail electric service is essential to ensuring that the
18 benefits of the competitive market reach all customers. The commission shall not implement
19 retail competition, as more fully defined in this Act, prior to September 1, 2001.

20 Sec. 2.302. UTILITY ELECTION.

21 (a) Any electric utility or municipally owned utility may elect to be regulated under
22 this subtitle by providing written notification to the regulatory authority on or before October
23 31, 1997. Upon application by a utility, the commission may extend the deadline for that
24 utility. Such electing utility shall be required to follow the provisions of this Subtitle. The
25 election is irrevocable.

26 (b) An investor-owned utility that does not elect to be regulated under this Subtitle
27 will continue to be regulated under the other Subtitles of this Act until September 1, 2001,

1 when such utility will be required to offer customer choice pursuant to Section 2.309 and
2 shall have no claim for stranded investment recovery under this Subtitle.

3 (c) Unless election under this Subtitle is permitted by a federal court having
4 jurisdiction, any investor-owned electric utility that has in effect on January 1, 1997, a
5 system-wide rate freeze for residential and commercial customers in Texas that has been
6 found by the regulatory authority to be in the public interest and is effective through at least
7 December 31, 2004 is exempt from the requirements of this Subtitle and shall be required
8 to offer customer choice only after the end of its prior-approved rate freeze period.

9 (d) A municipally owned utility or an electric cooperative corporation utility that
10 does not elect to be regulated under this Subtitle will continue to be regulated under the other
11 Subtitles of this Act until the governing body of such utility notifies the regulatory authority
12 of its decision to offer customer choice. If such notification from a municipally-owned utility
13 or electric cooperative corporation is received on or after September 1, 1999, compliance
14 with Section 2.303 would not be required, and such notifying utility may offer customer
15 choice at that time. If a municipally-owned utility chooses to offer customer choice then,
16 upon notification of the regulatory authority by the municipally-owned utility the subsection
17 (e) of this section shall apply.

18 (e) No electric utility or municipally owned utility may offer to sell electricity to
19 retail customers outside of its certificated retail service area until and unless it offers
20 customer choice to its own retail customers. An affiliate of either an electric utility or a
21 municipally owned utility may not offer to sell electricity to retail customers outside of its
22 affiliated utility's certificated retail service area until and unless the affiliated utility offers
23 customer choice to its own retail customers.

24 (f) The governing body vested with the power to operate and manage the municipally
25 owned utility shall have the discretion to decide when, or if, the municipally owned utility will
26 provide retail choice. For a municipally owned utility, the governing body vested with power
27 to operate and manage the municipally owned utility shall establish and enforce service quality

1 standards. Municipally owned utilities may choose to participate or not to participate in retail
2 customer choice subject to the following provisions:

3 (1) Municipally owned utilities that choose not to participate fully in retail
4 choice shall not have the right to offer electric energy at unregulated prices directly to retail
5 customers served from the interconnected grid outside their certificated retail service area.
6 Such municipally owned utilities shall retain the right to offer and provide a full range of
7 customer service and pricing programs to the customers within their certificated service area..

8 (2) Municipally owned utilities which choose to participate in retail customer
9 choice may do so at any time after September 1, 2001 by adoption of an appropriate resolution
10 of the municipal governing body or body vested with power to manage and operate the
11 municipally owned utility.

12 (3) Thereafter, all retail customers within the certificated electric service area
13 of the municipally owned utility shall have the right of retail choice and the municipally
14 owned utility shall provide open access for retail service. In addition, the municipally owned
15 utility shall have the right to offer electric energy at unregulated prices directly to retail
16 customers without regard to geographic location.

17 (4) The municipal governing body or body vested with power to manage and
18 operate the municipally owned utility shall have exclusive jurisdiction:

19 (A) to set all terms of access, conditions, and rates applicable to
20 services provided by the municipally owned utility, including nondiscriminatory terms of
21 access, conditions, and rates for distribution wheeling, but excluding transmission rates, terms
22 of access, and conditions for transmission service set by the commission under this title,

23 (B) to determine whether to functionally or structurally unbundle any
24 energy-related activities,

25 (C) to reasonably determine the amount of its stranded investment,

26 (D) to establish nondiscriminatory transition charges reasonably
27 designed to recover its stranded investment over an appropriate period of time,

1 (E) to determine the extent to which it will continue to provide
2 various customer services at the distribution level or accept such services from other
3 providers.

4 (F) to manage and operate its electric utility systems, including
5 exercise of control over the integrated resource planning process and any related expansion
6 programs.

7 (G) to establish customer safeguards and a code of conduct reasonably
8 designed to protect retail electric customers and to protect against anticompetitive practices,
9 and

10 (H) any other matters that the governing body believes should be
11 included.

12 (4) The municipal governing body or body vested with power to manage and
13 operate the municipally owned utility shall have exclusive jurisdiction over any other decisions
14 affecting the municipally owned utility's participation in retail customer choice.

15 Sec. 2.303. DISCOUNTED RATES.

16 (a) Effective September 1, 1997, and extending throughout the freeze period, each
17 electing utility shall discount the retail base rate tariff applicable to each customer in its
18 residential class or classes. The discount shall be applied to the utility's residential base rate
19 tariffs approved by the regulatory authority and in effect on January 1, 1997 and
20 notwithstanding any final order issued by any regulatory authority after January 1, 1997.
21 This discount shall be calculated as follows:

22 (1) For the period from September 1, 1997 to August 31, 1998, a four percent
23 reduction of the utility's retail base rate charges rendered under the applicable tariffed rates.

24 (2) For the period from September 1, 1998 to August 31, 1999, an additional
25 three percent reduction of the utility's base rate charges rendered under the applicable tariffed
26 rates.

1 (3) For the period from September 1, 1999 to August 31, 2001, an additional
2 three percent reduction of the utility's base rate charges rendered under the applicable
3 tariffed rates.

4 (b) Effective September 1, 1997, and extending throughout the freeze period, each
5 electing utility shall discount the retail base rate tariffs approved by the regulatory authority
6 for small commercial customers (metered peak demand of 30 kilowatts or less) in effect on
7 January 1, 1997. The discount shall be calculated as follows:

8 (1) For the period from September 1, 1997 to August 31, 1999, a two percent
9 reduction of the utility's base rate charges rendered under the applicable tariffed rates.

10 (2) For the period from September 1, 1999 to August 31, 2001, an additional
11 two percent reduction of the utility's base rate charges rendered under the applicable tariffed
12 rates.

13 (c) A person that is being served under a commercial customer base rate tariff on
14 January 1, 1997 that purchases electricity from an electing utility in more than one metered
15 location and who is not eligible for the discounts in subsection (b) shall have the option to
16 receive a single bill, based on the aggregated load for any and all of its metered locations
17 within the utility's certificated service area. A customer choosing this option shall notify the
18 utility in writing.

19 (d) An electing utility shall not be required to file a revised tariff to reflect a discount
20 required by this Section, but shall include the total discount as a line item on customer bills
21 affected by this Section.

22 (e) For purposes of this Section, "retail base rate" shall be the total retail charge
23 except for fuel or the fuel component of purchased power.

24
25 Sec. 2.304. FREEZE OF EXISTING RETAIL BASE RATE TARIFFS.

26 (a) From the day of election until August 31, 2001, an electing utility shall provide
27 retail electric service within its certificated service area in accordance with such electing
28 utility's retail base rate tariffs, excluding retail base rate tariffs in effect under bond,

1 approved by the regulatory authority before January 1, 1997, including its purchased power
2 cost recovery factor, at the levels in effect on January 1, 1997. Notwithstanding any final
3 order issued by the regulatory authority after January 1, 1997, where applicable, an electing
4 utility shall further provide retail electric service in accordance with contract terms applicable
5 to a particular retail customer approved by the regulatory authority and in effect on the
6 effective date of this Section, as adjusted in accordance with Section 2.303. An electing
7 utility may adjust its purchased power cost recovery factor for the purchase of power
8 generated by a qualifying facility under a contract becoming effective during the freeze
9 period, but if such utility opts to adjust its purchased power cost recovery factor to increase
10 rates at any time during the freeze period, it shall also decrease rates if contracts expire
11 during the freeze period. In no event, except for reasons of “force majeure” as provided for
12 in subsection (g) of this Section, shall an electing utility increase its base rates above those
13 rates provided for in this Section and Section 2.303.

14 (b) This Section does not limit or alter the ability of an electing utility to revise its
15 fuel factor or reconcile fuel expenses and refund fuel overcollections or surcharge fuel
16 undercollections to customers, as authorized by its tariffs and Section 2.212(g)(2) and (3) of
17 this Act. All such charges and the purchased power cost recovery factor pursuant to Section
18 2.212(g)(2) and (3) shall expire when the electing utility offers customer choice.

19 (c) Notwithstanding any other provision of law, including any other provision of this
20 Act, during the freeze period, the regulatory authority shall not reduce the retail base rates
21 of an electing utility, or cause such utility to refile its base rate tariffs, except as is required
22 pursuant to Section 2.303. During the freeze period, the base rates, overall revenues, return
23 on invested capital, or net income of an electing utility shall not under any circumstance be
24 subject to complaint, hearing, or determination as to their reasonableness, except as provided
25 for under Section 2.306 and Section 2.307. Nothing in this subsection, however, restricts any
26 customer’s right to complain to the regulatory authority regarding quality of retail electric
27 service provided by the electing utility or the applicability of an electing utility’s particular
28 tariff to such customer.

1 (d) Notwithstanding any other provision in this Act, nothing shall restrict an electing
2 utility, voluntarily and at its sole discretion, from offering new services or tariff options to
3 its customers during the freeze period, provided such offering is equal to or greater than a
4 utility's long-run marginal cost and is not unreasonably preferential, prejudicial,
5 discriminatory, predatory, or anticompetitive. Revenues from such offerings shall be
6 accounted for consistent with Section 2.001(d).

7 (e) Any utility electing to be regulated under this Subtitle which has a rate
8 proceeding pending before the commission as of January 1, 1997, for which no final order
9 has been issued on or before the effective date of this Act, may withdraw that proceeding
10 notwithstanding any other provision of law or prior decision of the commission. Such
11 electing utility under the subsection shall retain its rights to have the commission conduct
12 proceedings and issue a final order pertaining to any matter which may be remanded to the
13 commission during the freeze period by a court having jurisdiction; provided, however, that
14 any such final order shall not impact the rates charged to customers during the freeze period,
15 but shall be taken into account during the utility's true-up proceeding pursuant to Section
16 2.307.

17 (f) Any final order affecting retail base rates issued by the commission between
18 January 1, 1997 and the effective date of this Subtitle shall be nullified. The difference
19 between base rates in effect as of May 1, 1996 and any higher base rates implemented under
20 bond in a proceeding in which a final order is entered between January 1, 1997 and the
21 effective date of this Subtitle shall be fully refunded to customers.

22 (g) For purposes of this rate freeze, "force majeure" does not include any changes
23 in general economic conditions such as inflation, interest rates, or other factors of general
24 application. "Force majeure" means a major event or combination of major events, including
25 new or expanded state or federal statutory or regulatory requirements, hurricanes, tornadoes,
26 ice storms, or other natural disasters or acts of war, terrorism or civil disturbance beyond the
27 control of an electing utility that the regulatory authority finds increases the electing utility's
28 total non-fuel costs or decreases the electing utility's total non-fuel revenues related to the

1 generation and delivery of electricity by more than five percent for any calendar year during
2 the freeze period. Notwithstanding the provisions of Section 2.212 of this Act, the regulatory
3 authority must permit an electing utility to fully collect any force majeure increase through
4 an appropriate customer surcharge mechanism.

5
6 Sec. 2.305. UNBUNDLING.

7 (a) On or before September 1, 1998, each electing utility shall unbundle its costs and
8 rates into generation, transmission, distribution and customer service operations. In its report
9 to the 76th Legislature required under Section 2.003, the commission shall make statutory
10 recommendations regarding the definition and unbundling requirements of “customer service
11 operations.”

12 (b) On or before September 1, 2001, each electing utility shall separate its business
13 activities from one another as follows:

- 14 (1) generation facilities, operations, services and rates;
15 (2) transmission and distribution facilities, operations, services and rates; and,
16 (3) customer services facilities, operations, services and rates, as will be
17 further defined.

18 (c) The utility may accomplish the separation required under subsection (b) through
19 creation of separate, non-affiliated companies; or separate affiliated companies owned by a
20 common holding company; or sale of assets to a third party.

21 (d) The utility’s organizational unit(s) that perform(s) transmission and/or
22 distribution functions shall not sell electricity nor otherwise participate in the market for
23 electricity.

24 (e) As of August 31, 2000, the commission by rule shall establish a code of conduct
25 that must be observed by all market participants and their affiliates. The code of conduct
26 must, at a minimum, protect against anticompetitive practices by a utility or power merchant,
27 their affiliates, or their unbundled or separated facilities, operations or services, including the
28 sharing of personnel, competitive information, or information systems. Each electing utility

1 and other market participant shall, at a minimum, unbundle its operations such that there is
2 a physical separation of personnel, information flow, functions and operations, and such that
3 the only shared interest is at the holding company or corporation board of directors.

4
5
6 Sec. 2.306. RECOVERY OF POTENTIALLY STRANDABLE INVESTMENT.

7
8 (a) Definitions. As used in this Section and in Section 2.307:

9 (1) “Generation assets” includes generation plants and generation-related
10 regulatory assets.

11 (-2) “Market value” means, for generation assets, the value such assets
12 would have if bought and sold in a bona-fide third party transaction or transactions on the
13 open market.

14 (3) “Positive stranded cost” means the excess of the net book value of
15 generation assets over the market value of such assets or any above-market purchased power
16 costs.

17 (4) “Negative stranded cost” means the excess of the market value of
18 generation assets over the net book value of such assets.

19 (5) “Regulatory assets” means costs that have been approved by the
20 regulatory authority and deferred for future recovery as a result of actions by the regulatory
21 authority and shall include unrecovered deferred income taxes recorded pursuant to
22 Statement of Financial Accounting Standards No. 109 (“Accounting for Income Taxes”),
23 plant accounting deferrals including mirror construction work in progress, and costs
24 associated with reacquisition of securities, offset by the amount of investment tax credits.

25 (6) “Above-market purchased power costs” means those wholesale
26 demand and energy costs which a utility is obligated to pay pursuant to an existing purchased
27 power contract, to the extent such costs are greater than the purchased power market value.

1 (7) “Purchased power market value” means the value of demand and
2 energy bought and sold in a bona fide third party transaction or transactions on the open
3 market, and shall be determined by the weighted average costs of the highest offers from the
4 market for purchase of the demand and energy available under the existing purchased power
5 contracts.

6 (8) “Existing purchased power contract” means any purchased power contract
7 in effect on January 1, 1997.

8 (b) An electing utility is allowed to recover all of its net, verifiable, nonmitigable
9 stranded investment incurred in providing electric generation service. This Section provides
10 a number of tools to a utility electing under this Subtitle to accomplish this objective. Each
11 electing utility which was reported by the commission to have positive “excess costs over
12 market” (denoted as the “expected value” for full retail competition in 1998 with respect to
13 its Texas jurisdiction) in the January 1997 Report to the 75th Legislature entitled “Potentially
14 Strandable Investment Report”, must use these tools to reduce the net book value of
15 (otherwise referred to as “accelerate” the cost recovery of) its generation assets each year to
16 the greatest extent reasonably practicable. All other electing utilities shall flow any annual
17 revenues in excess of annual costs, as defined in subsection (e), to its customers through the
18 power cost recovery factor.

19 (c) An electing utility that has regulatory assets, as defined in subsection (a), may
20 securitize an amount no greater than the full value of those regulatory assets at any time after
21 the start of the freeze period, for a period not to exceed fifteen years. The terms of such
22 securitization shall be consistent with the procedures and definitions adopted pursuant to
23 Section 2.312. No other assets of an electing utility may be securitized until the completion
24 of the freeze period. In no event shall the use of the securitization provision during the
25 freeze period lead to rates which are higher than those established in Section 2.304, as
26 adjusted pursuant to Section 2.303.

27 (d) For the length of the freeze period, an electing utility may redirect all or a part
28 of the depreciation expense relating to transmission and distribution assets to its generation

1 assets or to a corresponding regulatory asset. The electing utility shall report such decision
2 to the regulatory authority. Any adjustments thereby made to the book value of transmission
3 and distribution assets or the creation of any related regulatory assets shall be accepted and
4 applied by the regulatory authority for establishing net invested capital and base rates in any
5 proceeding occurring after the freeze period, but the design of such post freeze-period rates
6 shall not shift the allocation of responsibility for stranded investment.

7 (e) Beginning with the 1997 calendar year, a utility electing under this Subtitle shall
8 file a report with the regulatory authority at the end of each year during the freeze period
9 pursuant to a schedule and a format determined by the commission. For electing utilities
10 reported by the commission in its January 1997 Report to the 75th Legislature entitled
11 “Potentially Strandable Investment Report” to have positive stranded costs, the purpose of
12 the report is to ascertain the net book value of the generation assets by applying any positive
13 difference between annual revenues and annual costs (as defined below) to reduce the book
14 value of the generation assets. For all other electing utilities, the purpose of the report is to
15 quantify the amount of reduction, if any, to be flowed through the power cost recovery factor
16 to its customers. The report shall quantify the annual revenues and annual costs of the
17 electing utility and shall be used to establish the net book value of generation assets as of the
18 end of the reporting period. In determining annual costs, the following assumptions shall be
19 used:

20 (1) Texas jurisdictional operation and maintenance expense reflected in each
21 utility’s 1996 FERC Form 1, adjusted for non-recurring expenses and Section 2.212(g) costs,
22 and not indexed for inflation or load growth;

23 (2) the amount of nuclear decommissioning expense approved in a utility’s
24 last rate proceeding before the regulatory authority, as may be required to be adjusted to
25 comply with applicable federal regulatory requirements;

26 (3) the depreciation rates approved in a utility’s last rate proceeding before
27 the regulatory authority;

1 (4) the amortization expense approved in a utility's last rate proceeding
2 before the regulatory authority, provided that if the items are fully amortized or become
3 securitized during the freeze period, the expense shall be adjusted accordingly;

4 (5) taxes, other than income taxes, and assessments approved in a utility's
5 last rate proceeding before the regulatory authority, adjusted for the net impact of any action
6 taken in the 75th Legislature;

7 (6) federal income tax expense, calculated according to the stand-alone
8 methodology; and,

9 (7) return on invested capital, calculated by multiplying invested capital as
10 of December 31 of the report year by the cost of capital approved in a utility's most recent
11 rate proceeding in which the cost of capital was specifically adopted, provided that the final
12 rate order for such proceeding was issued on or after January 1, 1992. In lieu of such order,
13 a cost of capital of 9.6 percent may be used.

14 (f) The electing utility shall seek overall savings in costs, such as operational
15 efficiencies and lowered costs of capital due to securitization as allowed under Section
16 2.306(c) or debt refinancing. Annual net savings shall be reflected in the report in the
17 appropriate category and shall be applied toward reductions of stranded cost exposure.

18 (g) For the purposes of determining invested capital in each annual report, the net
19 plant in service and deferred federal income taxes shall be updated each year. Capital
20 additions to generation plant in an amount less than one and one-half percent of the utility's
21 net plant in service on December 31, 1996 (less plant items previously excluded by the
22 Commission) for each of the years 1998 through 2001 shall have a rebuttable presumption
23 of prudence. All other items in invested capital shall be as approved in the utility's last rate
24 proceeding before the regulatory authority. Transactions performed pursuant to Section
25 2.054(c) and other transactions authorized by this Act or approved by the regulatory authority
26 which affect the net book value of generation assets during the freeze period shall be treated
27 in accordance with generally accepted accounting principles as modified by regulatory
28 accounting rules generally applicable to utilities.

1 (h) The report filed under this Section shall be a public document, and shall be
2 reviewed by the staff of the commission and the office of public utility counsel, which may
3 review workpapers and supporting documents and engage in discussions with the utility
4 about the data underlying the reports. The staff of the commission and the office of public
5 utility counsel shall communicate in writing to the electing utility within 180 days if they
6 have any disagreements with the data or calculations. No further action on the staff
7 responses shall be required of the commission until the true-up proceeding pursuant to
8 Section 2.307 of this Act.

9 Sec. 2.307. TRUE-UP PROCEEDING.

10 (a) An electing utility shall not be permitted to over-recover stranded costs through
11 the application of the measures provided for in Section 2.306 or through the procedures
12 established in this Section.

13 (b) At a schedule and under a procedure to be determined by the commission, an
14 electing utility shall come before the regulatory authority to reconcile its collections during
15 the freeze period with its positive or negative stranded costs.

16 (c) An electing utility shall file the following items with the commission, according
17 to a schedule to be adopted by the commission:

18 (1) its reports filed during the freeze period including any responses filed by
19 commission staff or the office of public utility counsel;

20 (2) its net generation asset book value at the end of the freeze period;

21 (3) the market value of the utility's generating assets, quantified consistent
22 with subsection (d); and

23 (4) any mechanism or mechanisms the utility proposes to use to recover any
24 remaining stranded investment after the end of the freeze period, if the electing utility desires
25 to seek recovery of its remaining stranded investment. These mechanisms may include a
26 non-bypassable customer charge assessed on users of the utility's system or securitization
27 pursuant to Section 2.312 of this Act, and shall not include an exit fee. The charge for each

1 customer shall be separately calculated and shall not exceed the amount of stranded cost
2 identified in the rates paid by the customer during the freeze period.

3 (d) Stranded cost shall be quantified using market-based methods to the maximum
4 extent reasonably practicable, including sale of assets in a bona-fide third party transaction
5 and stock valuation of a generation affiliate. For situations where use of a market-based
6 valuation is not reasonably practicable, the regulatory authority shall use an ECOM proxy
7 method, and for nuclear generating assets only, may use a reasonable proxy value.

8 (1) Sale of Assets. If, at any time after September 1, 1997, the electing utility
9 has sold all or substantially all of its generation assets in bona-fide third party transactions
10 pursuant to a competitive offering, the total new value realized from such sale shall establish
11 the market value of the generation assets. If the electing utility has sold substantially less
12 than all of its generation assets in one or more bona-fide third party transactions, the value
13 realized from such sale or sales shall establish the market value only of the assets sold. If not
14 all assets are sold, then the market value of the remaining generation assets shall be
15 established by one of the other methods set forth in this section.

16 (2) Stock Valuation Method. If, at any time after September 1, 1997, the
17 electing utility has transferred generation assets to a separate affiliated or non-affiliated
18 corporation and at least nineteen percent of the common stock thereof is spun off and
19 privately placed, distributed or sold to public investors through a national stock exchange,
20 the commission shall determine by rule the appropriate time for valuing the stock of such
21 corporation to establish the market value of the common stock equity in the transferee
22 corporation. The book value of the transferee corporation's debt and preferred stock
23 securities shall be added to such market value of the transferee corporation's common stock
24 equity in determining the market value of its assets. Such market value of the assets shall
25 be reduced by the corresponding net book value of the assets acquired by the transferee
26 corporation from any entity other than the utility. If not all assets are transferred and spun off,
27 then the market value of the remaining generation assets shall be established by one of the
28 other methods set forth in this section.

1 (3) ECOM Method. The methodology described in the commission's
2 January 1997 Report to the 75th Legislature entitled "Potentially Strandable Investment
3 (ECOM) Report" may be used if it is not reasonably practicable to use one of the market
4 valuation methods. Appropriate asset-specific values for remaining economic life and heat
5 rate shall be used. Natural gas prices used in the model shall be based on natural gas futures
6 quoted in the Wall Street Journal for no less than a 36 month period. The commission by
7 rule shall further specify the procedures to be used by a utility quantifying its stranded costs
8 using the ECOM method.

9 (4) Fixed Value Method. With respect to nuclear generation assets only, the
10 electing utility may opt to have the market value deemed to be 450 dollars per kilowatt of
11 installed capacity.

12 (e) If, after a hearing, the commission determines that the market value of the
13 electing utility's generating assets exceeds the net book value of its generation assets as of
14 September 1, 2001, the commission may reverse the reassignment of depreciation allowed
15 during the freeze period, refund the excess revenues to customers over a reasonable period,
16 or both.

17 (f) If, after a hearing, the commission determines that the net book value of the
18 electing utility's generation assets as of September 1, 2001, exceeds the market value of the
19 electing utility's generating assets, then the commission shall authorize recovery of the
20 remaining positive stranded cost through a non-bypassable charge in such a manner that will
21 not create a competitive advantage for an electric utility nor impede the entry of new
22 generation suppliers. The length of such a recovery period shall be chosen such that the
23 amount to be collected is recovered as quickly as possible without resulting in base rates
24 which are higher than those in effect as of the last day of the transition period. The
25 commission shall issue a final order within one-hundred eighty days of the filing by the
26 electric utility provided that the deadline shall be extended two days for every hearing day
27 in excess of fifteen hearing days.

1 (g) A hearing under this subsection shall be conducted in accordance with the
2 provisions of this Act and Section 2.106. The commission must determine whether the
3 market and administrative valuations used were reasonable. In reviewing the annual reports
4 and approving any final amount of stranded cost for future recovery or reimbursement, the
5 commission shall also consider the extent to which the utility used the tools available to
6 reduce the net book value of its assets, as required by Section 2.306(j).

7
8 Sec. 2.308. CUSTOMER SAFEGUARDS

9 (a) By January 1, 2001, the commission shall ensure that the following retail
10 customer protections are established:

11 (1) a customer is entitled to safe, reliable and affordable electricity, including
12 but not limited to protection against service disconnections in extreme weather, in cases of
13 medical emergency or in cases of non-payment for unrelated services;

14 (2) a customer is entitled to:

15 (A) have utility bills and payment records treated as confidential,
16 except where the customer consents to their release, or where such data is provided only in
17 the aggregate;

18 (B) have accurate and understandable bills, including the option to
19 have all electric services on a single bill from its chosen provider;

20 (C) have uniform and non-discriminatory treatment with regard to
21 billing and collection practices;

22 (3) a customer is entitled to choice of generation providers consistent with
23 the timeline and provisions of this Subtitle, is entitled to choose a supplier without obtaining
24 a specialized meter, is entitled to have its load aggregated with other customers and is
25 entitled to assume that the chosen provider will not be changed without the customer's
26 informed consent;

27 (4) a customer is entitled to be informed and involved during the transition
28 to a competitive electric industry;

1 (5) a customer is entitled to have access to providers of energy efficiency
2 measures and to providers of energy generated by renewable energy resources;

3 (6) a customer is entitled to receive service under a standard service package
4 from the customer's chosen electric service provider;

5 (7) a customer shall be entitled to be served by a commission-designated
6 default electric service provider (which may for this purpose include the distribution utility)
7 under a commission-approved standard service package (including, until September 1, 2004,
8 a reasonable commission-approved cap on rates to be charged);

9 (8) a low-income customer shall have access to a basic support package;

10 (9) a customer is entitled to sufficient information to make an informed
11 choice of service provider;

12 (10) a customer is entitled to fair and reasonable marketing and sales
13 practices; credit, collection and connection practices;

14 (11) a customer is entitled to have any disputes with providers resolved by
15 a neutral third party.

16 (b) The commission shall adopt rules as appropriate to enforce the provisions of
17 subsection (a), shall have jurisdiction over all providers of electric service in enforcing the
18 provisions of subsection (a), and may assess penalties pursuant to Section 1.3215 and Section
19 1.322.

20 (c) On or before January 1, 2001, the commission shall review and modify its current
21 rules regarding customer protections to ensure that at least the same level of customer
22 protection against potential abuses and the same quality of service that exists on August 31,
23 1997 is maintained in a restructured electric industry.

24 (d) In its report to the 76th Legislature required under Section 2.003, the commission
25 shall make recommendations regarding the funding mechanism for the low income basic
26 support program and any other stranded benefits, provider of last resort and designated
27 default supplier determinations and obligations, and standard information which should be
28 provided to customers about market choices.

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Sec. 2.309. RETAIL CUSTOMER CHOICE.

(a) Except for retail customers of utilities described in Section 2.302(c), each retail customer in the state shall have customer choice on and after September 1, 2001.

(b) In addition to the requirements to provide transmission service at wholesale pursuant to Section 2.056 and Section 2.057 of this Act, on and after September 1, 2001, the commission (or with regard to use of a municipally-owned utility's distribution facilities, its governing board) shall by rule require an electric utility, except for those electric utilities described in Section 2.302(c), to provide transmission and/or distribution service to another utility, power merchant, qualifying facility, exempt wholesale generator, power marketer, or end use customer at rates, terms of access and conditions that are comparable to the utility's affiliates' use of the utility's facilities.

(c) On or before January 1, 2001, the commission (or, in the case of a municipally-owned utility, its governing board) shall establish reasonable and comparable terms of access, conditions and rates for open access on distribution facilities. The terms of access, conditions and rates shall be comparable to the terms of access, conditions and rates of the utility's and the utility's affiliates' use of its system. The rules shall also provide that all ancillary services provided by the utility to itself and its affiliates are also provided to third persons upon request. The commission shall coordinate its efforts with affected municipally owned utilities to develop a statewide regulatory regime which facilitates efficient power delivery and customer choice.

(d) When a utility offers customer choice, the commission (or in the case of a municipally owned utility, its governing board) may require distribution service at wholesale or retail, and may require a transmission or distribution utility to including construct or enlarge facilities to assure safe and reliable service for the state's electric markets.

(e) The commission's rules (or in the case of a municipally owned utility, its governing board) shall be consistent with the standards of this statute and shall not be

1 contrary to an applicable decision, rule or policy statement of a federal regulatory agency
2 having jurisdiction.

3 (f) All utilities that own or operate transmission and distribution utilities shall file
4 tariffs implementing the open access rules with the appropriate state or federal regulatory
5 authority having jurisdiction over the transmission and distribution service of the utility 90
6 days before customer choice is offered. Utilities described in Section 2.302(c) shall file
7 tariffs with the appropriate state or federal regulatory authority having jurisdiction within 60
8 days of notification to the commission that they have opted to offer customer choice.

9 (g) At the conclusion of the freeze period, any remaining costs associated with
10 nuclear decommissioning obligations shall continue to be subject to cost of service rate
11 regulation, and shall be included as a non-bypassable charge to the regulated utility's
12 customers.

13 (h) After the conclusion of the freeze period and establishment of a mechanism to
14 recover any additional stranded costs in the true-up hearing, or the generation costs, other
15 than nuclear decommissioning costs, of electing utilities and of all other investor-owned
16 utilities will no longer be regulated, and recovery of such generation costs shall therefore not
17 be allowed through regulated rates. In the case of an investor-owned electric utility that has
18 in effect on January 1, 1997, a commission-approved system-wide rate freeze which is in
19 effect through at least December 31, 2004, this requirement will apply after the conclusion
20 of that particular utility's rate freeze.

21 (i) The commission (or the governing board over a municipally owned utility) shall
22 have the authority to prevent a utility from cross-subsidizing its competitive services by
23 revenues from its noncompetitive services or otherwise prevent a utility's affiliate or any
24 selected non-affiliated provider from obtaining an advantage over its competitors based on
25 the utility's affiliation with the transmission and distribution function of the utility.

26 Sec. 2.310. CONTRACTUAL OBLIGATIONS. No provision of this Act may
27 interfere with or be deemed to abrogate the rights or obligations of parties, including a retail
28 or wholesale customer, to a contract with an investor-owned electric utility, municipally

1 owned utility, or electric cooperative corporation. No provision of this Act may interfere or
2 be deemed to abrogate the rights or obligations of a party under a contract or agreement
3 concerning certificated utility service areas.

4 Sec. 2.311. MARKET POWER.

5 (a) Each electric utility, power marketer, power merchant, exempt wholesale
6 generator, or other generation owner (for the purposes of this subsection, “electric power
7 supplier”) shall report annually to the commission its installed generation capacity, the total
8 amount of capacity it has available to make sales to others, its annual retail sales and its
9 annual wholesale sales in the state. The commission shall prescribe by rule the nature and
10 detail of reporting requirements.

11 (b) The Electric Reliability Council of Texas (“ERCOT”) Independent System
12 Operator (“ISO”) shall submit an annual report to the commission for approval which shall
13 identify existing and potential transmission and/or distribution bottlenecks and constraints,
14 system needs, alternatives for meeting system needs, and recommendations for meeting the
15 identified needs. The first such report of the ISO shall be presented to the commission on
16 or before January 5, 1999. Subsequent reports shall update particular transmission-related
17 issues determined by the ISO to affect the ERCOT transmission network during and
18 immediately following the transition to a competitive generation market.

19 (c) Following review of the report submitted by the ISO under subsection 2.311(c),
20 the commission shall determine whether specific transmission or distribution constraints or
21 bottlenecks or other considerations within the state give rise to market power in specific
22 geographic markets in the state. The commission shall, upon a finding that specific
23 transmission or distribution constraints or bottlenecks within the state give rise to market
24 power, have the authority to order reasonable mitigation of that market power by ordering
25 a utility or utilities to construct additional transmission and/or distribution capacity.

26 (d) The commission shall ensure that an electric power supplier shall not possess
27 sufficient market power to control prices, restrict output, or otherwise adversely affect
28 competition in the electric power market.

1 (e) On and after January 1, 2001, the commission shall monitor market power in
2 ERCOT and in the state by tracking the Herfindahl–Hirschman Index (HHI) associated with
3 the capacity available to make sales to others of all electric power suppliers available in
4 ERCOT (including interconnected capacity) and in the state, as well as the HHI associated
5 with all wholesale sales and all retail sales within ERCOT and within the state. If the HHI
6 of available capacity, wholesale sales, or retail sales in ERCOT or in this state exceeds an
7 HHI value of 2000, the commission shall find that the generation market in ERCOT or in the
8 state is highly concentrated and is characterized by undue market power. After notice and
9 hearing, the commission may mitigate such market power by ordering one or more
10 participants to separate assets into independent generation companies, by instituting partial
11 price cap regulation, or by setting appropriate restrictions on sales of electricity in this state.

12 (f) Any electric power supplier that proposes to merge, consolidate or become
13 otherwise affiliated with any other electric power supplier in this state shall report such
14 transaction to the commission at least 90 days prior to the proposed closing date. Only if such
15 action would result in an entity that will have ten percent or more of the installed generating
16 capacity in Texas or in ERCOT, or would cause the HHI relating to installed generating capacity,
17 wholesale sales or retail sales in Texas or in ERCOT to exceed 2000, shall the commission
18 review the proposed merger, affiliation or consolidation to determine if the merger or
19 consolidation is in the public interest, considering the policies and principles included in the U.S.
20 Department of Justice (DOJ) and Federal Trade Commission (FTC) horizontal merger guidelines.
21 If the commission finds that such a transaction are not in the public interest, the commission
22 shall prohibit the merger, affiliation or consolidation or revise the terms and conditions of the
23 merger, affiliation or consolidation as necessary to protect the public interest.

24 Sec. 2.312. SECURITIZATION.

25 (a) Definitions. As used in this Section 2.312 the following words and phrases shall
26 have the meanings given them in this subsection (a):

27 (1) “Assignee.” An entity including, without limitation, a corporation,
28 limited liability corporation, partnership, limited partnership, limited liability partnership,

1 association, public authority, trust (including a business trust) or other legal entity or
2 financing vehicle to which an electric utility assigns, sells or transfers, other than as a
3 security, all or a portion of its interest in, or right to, qualified intangible property. The term
4 includes entities which have obtained an assignment, sale or transfer from another assignee
5 and an entity which may issue qualified property bonds.

6 (2) “Financing party.” A holder of qualified property bonds, including
7 trustees, collateral agents and other entities acting for the benefit of such a holder.

8 (3) “Qualified intangible charges.” The charges to be imposed and collected
9 by an electric utility from its customers to recover qualified costs pursuant to a qualified rate
10 order or pursuant to an order approving a periodic adjustment to the qualified intangible
11 charges pursuant to this section, which charges shall be separate and apart from and in
12 addition to charges for the sale and delivery of electricity and incidental services by the
13 electric utility or its successor or assigns or such other person as is authorized to collect and
14 remit the qualified intangible charges, which collection may be on behalf of an assignee.

15 (4) “Qualified intangible property.”

16 (A) The property right created under this section representing the
17 irrevocable right of the electric utility or an assignee to charge, collect and receive, through
18 qualified intangible charges, amounts sufficient to recover the qualified costs approved in the
19 qualified rate order. The term includes all right, title and interest of the electric utility or
20 assignee in the qualified rate order and in all revenues, collections, claims, payments, money
21 or proceeds of, or arising from qualified intangible charges pursuant to the order.

22 (B) Qualified intangible property is a current property right arising and
23 existing when, as, and to the extent that qualified intangible charges are authorized in a
24 qualified rate order that has become effective and shall thereafter continuously exist. The
25 qualified intangible property is a right created through this legislation expressly to facilitate
26 new financings by electric utilities and shall not be property covered by any financing or
27 mortgage agreement in effect on the date of enactment, and the qualified intangible charge
28 shall not be deemed to be a receivable or other collateral covered by any financing agreement

1 in effect on the date of enactment. The rights created under this section or in the qualified
2 rate order are contract rights until and unless such rights are sold or transferred by the electric
3 utility, but shall be property rights in the hands of the assignee or purchaser upon such
4 transfer.

5 (5) “Qualified rate order.” An order of the commission adopted in
6 accordance with this section authorizing the imposition and collection of qualified intangible
7 charges.

8 (6) “Qualified capital costs.” The assets which the qualified rate order
9 authorizes the utility to recover through qualified intangible charges, as further defined in
10 sections 2.306(c) and 2.307(e) of this Act.

11 (7) “Qualified expenses.” The costs which (A) are attributable to buying-out,
12 buying-down or otherwise reducing or eliminating above-market fuel, fuel transportation,
13 and purchased power contracts, and other contractual obligations for items included as
14 expenses or reconcilable costs in the utility’s rates in effect at the time the utility files its
15 application for a qualified rate order and (B) the qualified rate order authorizes the utility to
16 recover through qualified intangible charges.

17 (8) “Qualified costs.” The (A) qualified capital costs; (B) qualified expenses;
18 (C) the reasonable costs of retiring then existing debt or equity capital of the electric utility
19 or its holding company parent, including accrued interest and acquisition or redemption
20 premium, costs of defeasance, and other related fees, costs, and charges, through the issuance
21 of qualified property bonds or the assignment, sale or other transfer of qualified intangible
22 property; and (D) the reasonable costs incurred to issue, service, redeem or refinance the
23 qualified property bonds, including accrued interest and acquisition or redemption premium,
24 and other related fees, costs and charges, or to assign, sell or otherwise transfer qualified
25 intangible property. References to the principal of, and interest and premium on, qualified
26 property bonds shall refer to comparable payments with respect to certificates of participation
27 or of beneficial interest or other evidences of indebtedness or ownership.

1 (9) “Qualified property bonds.” Bonds, debentures, notes, certificates of
2 participation or of beneficial interest or other evidences of indebtedness or ownership which:

3 (A) are issued by or on behalf of the electric utility or assignee pursuant
4 to a qualified rate order;

5 (B) are secured by or payable from qualified intangible property; and

6 (C) have a term of no longer than fifteen (15) years from the date of issue.

7 (b) Qualified Rate Orders. Notwithstanding any other provision of law, the
8 commission is authorized to issue qualified rate orders in accordance with the provisions of
9 this section, to facilitate the recovery or financing of qualified costs of an electric utility or
10 assignee.

11 (1) A qualified rate order may be adopted by the commission only upon the
12 application of an electric utility. After the issuance of a qualified rate order, the electric
13 utility retains sole discretion to assign, sell or otherwise transfer qualified intangible property
14 or to cause qualified property bonds to be issued, including the right to defer or postpone
15 such assignment, sale, transfer or issuance.

16 (2) An electric utility may file an application for a qualified rate order
17 pursuant to the following procedures:

18 (A) Each application for a qualified rate order shall describe and quantify
19 (i) the qualified capital costs and qualified expenses; (ii) the qualified costs; (iii) the qualified
20 intangible charges required to assure recovery of the qualified costs; (iv) the period over
21 which the qualified intangible charges will be collected; (v) the utility’s proposal for the
22 assignment, sale or other transfer of qualified intangible property or the issuance of qualified
23 property bonds.

24 (B) After such notice as the commission deems appropriate, the
25 commission, in an administrative proceeding, which shall not be deemed a “contested case”
26 under the Administrative Procedure Act (codified in Chapter 2001 of the Texas Government
27 Code), shall issue a final qualified rate order on the terms requested by the utility if the
28 utility’s filing meets the following criteria: (i) the qualified property bonds will have a term

1 of fifteen (15) years or less; (ii) the reasonable qualified costs will be amortized over a term
2 not longer than the term of the qualified property bonds; (iii) the qualified capital costs
3 satisfy the conditions established in sections 2.306(c) and 2.307(e) of this Act; and (iv) the
4 qualified costs, as defined in subsections (a)(8)(C) and (D) of this section are reasonable.

5 (C) The commission shall complete its review of the application and issue
6 its final determination not later than ninety (90) days after the date of the filing.

7 (D) The qualified rate order proceeding shall not be considered a
8 proceeding to change rates under Sections 2.211 or 2.212 of this Act. The commission may
9 not consider any other changes to the electric utility expenses, rate base or revenues in the
10 qualified rate order proceeding.

11 (3) The qualified rate order shall state the following:

12 (A) the amount to be recovered as qualified costs;

13 (B) the qualified intangible charge, which shall be a non-bypassable charge
14 sufficient to permit recovery of 100% of the qualified costs and the period over which the
15 qualified intangible charge will be collected. The qualified intangible charges shall be
16 allocated among customer classes in the same manner as the qualified capital costs and
17 qualified expenses were allocated in the rates in effect at the time of the qualified rate order.

18 (C) the revenue requirement reduction, which shall be equal to the
19 reduction required to give effect to the removal of the qualified capital costs and qualified
20 expenses from the revenue requirements underlying rates in effect at the time of the qualified
21 rate order. The revenue requirement reduction to give effect to removal of qualified capital
22 costs shall be computed using the rate of return on invested capital, depreciation, and tax
23 allowance as defined in section 2.306(c) of this Act.

24 (D) the procedures for periodic adjustment of the qualified intangible
25 charges pursuant to paragraph (b)(6) to ensure that all qualified costs approved in the
26 qualified rate order are being recovered on a current basis and that any over-recovery or
27 under-recovery from prior periods is corrected within twelve (12) months. The qualified rate

1 order shall provide both a requirement that the utility make such periodic adjustments and
2 the authority for such adjustments.

3 (4) Except as provided in paragraph (6) of this subsection (b), the qualified
4 rate order and issuance of qualified property bonds shall not have any impact on the rates
5 charged by the electric utility during the period rates are frozen pursuant to Section 2.304 of
6 this Act. During the freeze period, the qualified intangible charges shall be separately
7 recorded and tracked on the books and records of the electric utility. During such period, the
8 utility may, but shall not be required, to revise its billing statements to state the qualified
9 intangible charge separately from the electric utility's existing rates. To the extent that the
10 electric utility elects to separately bill the qualified intangible charge during the freeze period,
11 the otherwise applicable rates of the electric utility shall be reduced by an amount equal to
12 the qualified intangible charge so billed. Following the freeze period, the qualified intangible
13 charge shall continue in effect as a separate, non-bypassable charge, consistent with the
14 qualified rate order. Any order by a regulatory authority setting the electric utility's rates for
15 periods following the transition period (A) shall include the qualified intangible charge as
16 a non-bypassable charge; and (B) shall not reduce the electric utility's revenue requirements
17 to reflect elimination of qualified costs by an amount which is greater than the revenue
18 requirement reduction stated in the qualified rate order.

19 (5) At the intervals provided for in the qualified rate order, which intervals
20 shall not be less frequent than once each year, the electric utility shall calculate and
21 implement adjustments to the qualified intangible charges to ensure that all qualified costs
22 approved in the qualified rate order are being recovered on a current basis and that any over-
23 recovery or under-recovery from prior periods is corrected within twelve (12) months. The
24 adjustment shall be determined in accordance with the requirements of the qualified rate
25 order. The electric utility shall submit a report showing the calculation of each adjustment.
26 The report will include certification by an independent nationally recognized accounting firm
27 with experience in utility accounting that the adjustment was computed in accordance with
28 the requirements of the qualified rate order. The commission shall determine whether

1 adjustments are necessary to (A) ensure the timely recovery of all qualified costs approved
2 in the qualified rate order; or (b) prevent over-recovery of costs beyond the reasonable
3 qualified costs provided for in the qualified rate order. The utility shall file its report on the
4 adjustment no later than 90 days prior to the proposed effective date of the adjustment and
5 the commission shall approve any required adjustment not later than 90 days after the utility
6 filing. The commission may modify the adjustment recommended by the utility to ensure
7 proper recovery under the terms of the qualified rate order. Such adjustments shall be made
8 notwithstanding that the electric utility's rates would otherwise be frozen pursuant to Section
9 2.304 of this Act.

10 (6) Notwithstanding any other provision of law, each qualified rate order and
11 the qualified intangible charges specified therein (including adjustments pursuant to
12 paragraph (b)(5)) shall be irrevocable upon issuance and the right to charge, collect and
13 receive and be paid from collections of qualified intangible charges, shall constitute a vested
14 property right upon the transfer of the related qualified intangible property. Neither the
15 commission or any successor agency exercising functions similar to those of the commission
16 shall have the authority, directly or indirectly, legally or equitably, to rescind, alter, repeal,
17 modify or amend a qualified rate order to revalue or revise the amount of qualified intangible
18 property, qualified costs or qualified intangible charges (as such charges may be adjusted
19 pursuant to paragraph (b)(5)) or the revenues required to recover qualified costs or to
20 determine that such qualified costs are unjust or unreasonable in any way, or to reduce or
21 impair the value of the qualified intangible property; nor shall the amount of revenue arising
22 with respect thereto be subject to reduction, impairment, postponement or termination.

23 (7) Notwithstanding any other provision of law, all or portions of the interest
24 of any electric utility in qualified intangible property may be assigned, sold or transferred to
25 an assignee and may be pledged or assigned as security by an electric utility or assignee to
26 or for the benefit of a financing party. To the extent that an interest is assigned, sold or
27 transferred or is pledged or assigned as security, the electric utility is authorized to contract
28 with the assignee or financing party that the electric utility (A) will continue to operate its

1 system to provide service to its customers; (B) will impose, and the utility or an entity
2 providing billing and collection services for the utility will collect, the applicable qualified
3 intangible charges for the benefit and account of the assignee or financing party; and (C) will
4 account for and remit the applicable qualified intangible charge to or for the account of the
5 assignee or financing party. Any such contract obligations undertaken by the electric utility
6 shall be binding upon the electric utility, its successors and assigns.

7 (8) In its qualified rate order, the commission shall afford the utility
8 flexibility in establishing the terms and conditions of the qualified property bonds, including,
9 without limitation, transaction structure, repayment schedules, interest rates and other
10 financing costs. Within thirty (30) days after issuance of the qualified property bonds, the
11 electric utility shall file the final terms of issuance with the commission.

12 (c) No Alteration of Rights. Qualified property bonds shall not be backed by the
13 credit of the state. The state, however, pledges to and agrees with the holders of any
14 qualified property bonds issued under this section and with any assignee or pledgee of
15 qualified intangible property or financing party and with any other person who may enter into
16 contracts with an electric utility under this section that the state will not limit, alter or in any
17 way impair or reduce the value of qualified intangible property or qualified intangible
18 charges (or rights with respect thereto) approved by a qualified rate order until the qualified
19 property bonds and interest and premium on the qualified property bonds are fully paid and
20 discharged and until any such contracts are fully performed on the part of the electric utility,
21 the assignee or financing party. Any assignee and financing party is authorized to include
22 this pledge and undertaking in any documentation with respect to the qualified property
23 bonds issued pursuant to this section.

24 (d) Security Interests In Qualified Intangible Property.

25 (1) Neither qualified intangible property nor any right, title or interest of a
26 utility or assignee described in subparagraph (A) of the definition of “qualified intangible
27 property,” whether before or after the issuance of the qualified rate order, shall constitute “an
28 account” or “general intangibles” under Section 9.106 of the Texas Business and Commerce

1 Code; nor shall such right, title or interest pertaining to a qualified rate order, including the
2 associated qualified intangible property and any revenues, collections, claims, payments,
3 money or proceeds of or arising from qualified intangible charges pursuant to such order, be
4 deemed proceeds of any right or interest other than a right or interest in the qualified rate
5 order or the qualified intangible property arising from the order.

6 (2) The creation, granting, perfection and enforcement of liens and security
7 interests in qualified intangible property to secure qualified property bonds is governed by
8 this section rather than by the Texas Business and Commerce Code.

9 (3) A valid and enforceable lien and security interest in qualified intangible
10 property shall be created either by the terms of the applicable qualified rate order, or by the
11 execution and delivery of a security agreement between the electric utility or assignee, and
12 a financing party, and shall attach and be perfected only by recording such lien and security
13 interest through a separate filing with the commission. For this purpose:

14 (A) If qualified property bonds are issued to finance any qualified costs,
15 as specified in the applicable qualified rate order, the lien and security interest securing the
16 bonds shall attach automatically as a statutory lien to the qualified intangible property
17 relating to such qualified costs from the time that value is received for issuance of the bonds.

18 (B) The lien and security interest under subparagraph (A) shall be deemed
19 a valid and enforceable lien and security interest in the qualified intangible property securing
20 the qualified property bonds and shall be continuously perfected if, before the date of
21 issuance of such bonds specified in subparagraph (A) or within no more than ten (10) days
22 after the date of issuance, a filing has been made by or on behalf of the financing party to
23 protect that lien and security interest in accordance with the procedures prescribed by the
24 commission under this subsection. Any filing or a lien and security interest securing
25 qualified property bonds issued pursuant to a qualified rate order shall have priority over any
26 filing in respect of a lien or security interest not securing qualified property bonds.

27 (C) The lien and security interest under subparagraph (A) is enforceable
28 against the assignee and all third parties (including judicial lien creditors whose liens become

1 perfected or attached after perfection of such lien and security interest), subject only to the
2 rights of any third parties holding security interests in the qualified intangible property
3 previously perfected in the manner described in this subsection securing qualified property
4 bonds if value has been given by the purchasers of such bond. A perfected lien and security
5 interest in qualified intangible property is a continuously perfected security interest in all
6 revenues and proceeds arising with respect to the associated qualified intangible property,
7 whether or not revenues have accrued. Qualified intangible property constitutes property for
8 the purposes of contracts securing qualified property bonds, whether or not the related
9 revenues have accrued. The lien and security interest created and perfected under this
10 subparagraph (C) ranks prior to any other lien, including any judicial lien, which
11 subsequently attaches to (i) the qualified intangible property; (ii) the qualified intangible
12 charges; or (iii) the qualified rate order or any rights created by the order or any proceeds of
13 the order.

14 (D) Any other provision of law, including Section 9.306 of the Texas
15 Business and Commerce Code, notwithstanding, the relative priority of a lien and security
16 interest created under this subsection is not defeated or adversely affected by the
17 commingling of revenue arising with respect to qualified intangible property with other
18 funds, including without limitation, funds of the electric utility or assignee, any successor of
19 either such party, or a party performing collection functions on behalf of any of the
20 foregoing.

21 (E) If an event of default occurs under qualified property bonds, the
22 holders of qualified property bonds or their authorized representatives, as secured parties,
23 may foreclose or otherwise enforce the lien and security interest in the qualified intangible
24 property securing the qualified property bonds as though such holders were secured parties
25 under Article 9 of the Texas Business and Commerce Code, subject to the rights of any third
26 parties holding prior liens and security interests in the qualified intangible property perfected
27 in the manner provided in this subsection. Upon application to the state district courts of
28 Travis County, Texas by the holders of qualified property bonds or their representatives,

1 without limiting their other remedies, the courts shall order the sequestration and payment
2 to such holders or their representatives of revenues arising with respect to the qualified
3 intangible property pledged to such holders. An order under this subparagraph (E) shall
4 remain in full force and effect notwithstanding any bankruptcy, reorganization, or other
5 insolvency proceedings with respect to the electric utility or assignee.

6 (e) True Sale. Notwithstanding any other provision of law, if in a transfer of
7 qualified intangible property by an electric utility to an assignee which the parties have in the
8 governing documentation expressly stated to be a sale or other absolute transfer shall be
9 treated as an absolute transfer then such transfer shall constitute a sale by the electric utility
10 or the assignee of all right, title and interest of the electric utility or assignee in and to such
11 qualified intangible property and such transfer shall be an absolute transfer of all of the
12 transferor's right, title and interest purported to be transferred, as in a true sale, and not as
13 a pledge or other financing of the qualified intangible property, but shall not be treated as a
14 transfer or sale of such property for federal or state income and franchise tax purposes.
15 Granting to holders of qualified property bonds a preferred right to the qualified intangible
16 property or the provision by the electric utility of any credit enhancement with respect to
17 qualified property bonds shall not impair or negate the characterization of any transfer as a
18 true sale, other than for federal and state income and franchise tax purposes. A transfer of
19 qualified intangible property shall be deemed effected and perfected as against third persons,
20 including any judicial lien creditors, when all of the following have taken place:

21 (1) The commission has issued the qualified rate order creating qualified
22 intangible property; and

23 (2) Documentation effecting the assignment, sale or other transfer of the
24 qualified intangible property has been executed and delivered to the assignee.

25 (f) Actions With Respect To Qualified Intangible Charges.

26 (1) Nothing in this subtitle shall entitle any person to bring an action against
27 a retail electric customer for nonpayment of qualified intangible charges, other than the

1 electric utility, its successor or assigns or such other person as is authorized to collect and
2 remit the qualified intangible charges.

3 (2) The state district courts in Travis County, Texas shall have exclusive
4 jurisdiction over any dispute concerning the process of collecting qualified intangible charges
5 by an electric utility, its successor or assigns or any other person authorized to collect such
6 charges.

7 (g) Judicial Review. Judicial review of a qualified rate order shall be expedited
8 pursuant to the following procedure.

9 (1) Any party to the process or proceedings resulting in the qualified rate
10 order who is aggrieved by the order shall not petition the commission for rehearing, but may
11 obtain judicial review of such order only in a proceeding as provided in this section which
12 shall be brought only in a state district court in Travis County, Texas.

13 (2) Appeal shall be initiated by the filing of a petition in the Travis County
14 state district court within fifteen (15) days after the signing of the qualified rate order. The
15 petition shall be served on the commission.

16 (3) Upon receipt of such petition, the commission shall promptly deliver to
17 the court a copy of any transcript and of its order and any accompanying findings or
18 conclusions (of which copies shall be available for examination at all reasonable times by
19 all parties without cost). The court shall permit the electric utility to be a party to the appeal.

20 (4) The appeal shall be based on the record before the commission, and upon
21 briefs to the court. No objection that has not been urged in the appellant's appearance before
22 or submission to the commission shall be considered by the court, unless the failure or
23 neglect to urge such objection shall be excused because of extraordinary circumstances.

24 (5) The judgment and order of the district court shall be final, subject only
25 to review by direct appeal to the Supreme Court of Texas filed within ten (10) days after the
26 judgment of the district court and further subject to paragraph (9) of this subsection.

1 (6) All appeals shall be heard and determined by the district court and
2 Supreme Court as expeditiously as possible and with lawful precedence over other matters,
3 recognizing that time is of the essence for financings pursuant to the qualified rate order.

4 (7) The grounds for and scope of judicial review of a qualified rate order shall
5 be limited to whether:

6 (A) the order is in conformity with the constitution and laws of the state
7 and the United States; and

8 (B) the order is within the commission's statutory authority provided for
9 in this section.

10 (8) Except as otherwise provided in this section, appeals taken hereunder
11 shall be governed by the Administrative Procedure Act, as codified in Chapter 2001 of the
12 Texas Government Code.

13 (9) In the event that the terms and conditions of a qualified rate order are
14 required to be modified in any part as a result of judicial review (other than in any manner
15 provided in the original terms of the order), the order shall take effect only after the
16 commission shall have adopted the terms and conditions thereof as so modified, and the
17 electric utility shall have filed with the commission its written consent to all terms and
18 conditions of the order as modified, and the modified order shall be subject to judicial review
19 (similarly limited to the effect of such changes) only in accordance with the same procedures
20 stated in paragraphs (1) through (8) of this subsection.

21 (h) Sunset Provisions. In the event the Public Utility Commission of Texas is
22 abolished and the other provisions of this Act expire as provided by the Texas Sunset Act
23 (Chapter 325 of the Texas Government Code) the provisions of this section, including the
24 provisions of this Act referred to in the provisions of this section, shall continue in full force
25 and effect and shall not expire pursuant to the Texas Sunset Act or otherwise and the
26 authorities, duties and functions of the commission under Subtitle G shall be performed and
27 carried out by a successor agency to be designated by the legislature prior to any such

1 abolition of the commission, or, in the event the legislature shall fail to designate such
2 successor, by the Texas Secretary of State.

3 Sec. 2.313. STRANDED COST RECOVERY OF ENVIRONMENTAL CLEAN-UP
4 COSTS. An expense shall be deemed eligible for stranded cost recovery if it is used to
5 retrofit electric generating facilities with emission control technology used to minimize
6 emissions and if it is more cost-effective to do so than to shut down the plant. If plant shut-
7 down is more economical than continued operation with environmental clean-up
8 improvements, then the net book value of the affected plant shall be eligible for stranded cost
9 recovery, subject to commission review and approval.

10
11 SECTION 27. Section 3.051(c), Public Utility Regulatory Act of 1995 (Article
12 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

13 (c) Except as provided by Subsections (l), (m), and (s) of this section and Section
14 3.052 of this Act, the commission shall only have the following jurisdiction over all
15 telecommunications utilities who are not dominant carriers:

16 (1) to require registration as provided in Subsection (d) of this section as a
17 condition of doing business in this state;

18 (2) to conduct such investigations as are necessary to determine the existence,
19 impact, and scope of competition in the telecommunications industry, including identifying
20 dominant carriers in the local telecommunications and intralata interexchange
21 telecommunications industry and defining the telecommunications market or markets, and
22 in connection therewith may call and hold hearings, issue subpoenas to compel the
23 attendance of witnesses and the production of papers and documents, and make findings of
24 fact and decisions with respect to administering the provisions of this Act or the rules, orders,
25 and other actions of the commission;

26 (3) to require the filing of such reports as the commission may direct from
27 time to time;

1 (4) to require the maintenance of statewide average rates or prices of
2 telecommunications service;

3 (5) to require that every local exchange area have access to local and
4 interexchange telecommunications service, except that a telecommunications utility must be
5 allowed to discontinue service to a local exchange area if comparable service is available in
6 the area and the discontinuance is not contrary to the public interest; this section does not
7 authorize the commission to require a telecommunications utility that has not provided
8 services to a local exchange area during the previous 12 months and that has never provided
9 services to that same local exchange area for a cumulative period of one year at any time in
10 the past to initiate services to that local exchange area; ~~and~~

11 (6) to require the quality of telecommunications service provided in each
12 exchange to be adequate to protect the public interest and the interests of customers of that
13 exchange if the commission determines that service to a local exchange has deteriorated to
14 the point that service is not reliable; and

15 (7) to revoke a registration for repeated violations of this Act or commission
16 rules.

17
18 SECTION 28. Section 3.051(s)(1), Public Utility Regulatory Act of 1995 (Article
19 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

20 (1) Except as otherwise specifically provided by this Act, the commission
21 shall have only the following authority over a holder of a certificate of operating authority
22 or service provider certificate of operating authority:

23 (A) to enforce the applicable provisions of this Act as provided by
24 Subtitle I, Title I, of this Act;

25 (B) to assert jurisdiction over a specific service in accordance with
26 Section 3.2572 of this Act;

27 (C) to require co-carriage reciprocity; ~~and~~

28 (D) to regulate condemnation and building access;

1 (E) to establish and ensure service quality and reliability and customer
2 service and protection; and

3 (F) to revoke a certificate under Section 3.263 of this Act.

4

5 SECTION 29. Section 3.2625(g), Public Utility Regulatory Act of 1995 (Article
6 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

7 (g) The commission may order disconnection of service or revocation of registration
8 [for up to one year] for repeat violations of this Act or commission rules.

9

10 SECTION 30. Section 3.263(a), Public Utility Regulatory Act of 1995 (Article
11 1446c-0, Vernon's Texas Civil Statutes), is amended to read as follows:

12 (a) The commission at any time after notice and hearing may revoke or amend any
13 certificate of convenience and necessity, certificate of operating authority, or service provider
14 certificate of operating authority if it finds that the certificate holder has never provided or
15 is no longer providing service in the area or part of the area covered by the certificate. The
16 commission may also revoke a certificate of convenience and necessity, certificate of
17 operating authority, or service provider certificate of operating authority for repeated
18 violations of this Act or commission rules.

19

20 SECTION 31. Government Code, Chapter 551, Section 551.001(3) is amended to read
21 as follows:

22

23 "Governmental body" means:

24

25 a municipal governing body in the state, but not with respect to activities of a governing
26 body which relate to the municipally owned electric or gas utility or unbundled divisions
27 of a municipally owned electric or gas utility, nor does it include a separate policy-

1 making body of any municipality or its affiliate whose sole function is the management
2 and operation of the unbundled divisions of a municipally owned electric or gas utility.

3

4 SECTION 32. The Government Code, Chapter 552, Section 552.003(1)(A)((iii), is
5 amended to read as follows:

6

7 a municipal governing body in the state, but not with respect to activities of a governing
8 body which relate to the municipally owned electric or gas utility or unbundled activities
9 of a municipally owned electric or gas utility, nor does it include a separate policy-
10 making body of any municipality or its affiliate whose sole function is the management
11 and operation of the unbundled generation and marketing division of a municipally
12 owned electric utility.

13

14 SECTION 33. Section 2.101(a), Public Utility Regulatory Act of 1995 (Article
15 1446c-O, Vernon's Texas Civil Statutes), is amended to read as follows:

16

17 Sec. 2.101. (a) Subject to the limitations imposed in this Act, and for the purpose of
18 regulating rates and services so that such rates may be fair, just and reasonable, and
19 the services adequate and efficient, the governing body of each municipality shall
20 have exclusive original jurisdiction over all electric utility rates, operations, and
21 services provided by an electric utility within its city or town limits. With respect to
22 a municipally owned utility, the governing body of the owning municipality, or its
23 designee, shall have exclusive original jurisdiction over all rates, operations, and
24 services provided by the municipally owned utility, other than transmission rates set
25 by the commission.

26

27 SECTION 34: Article 1115a of Vernon's Texas Civil Statutes is amended to read
28 as follows:

1
2 Article 1115a. Management and control of electric utility

3
4 Application

5
6 Sec. 1. This article applies to a home-rule municipality that owns an electric utility system,
7 by ordinance elects to have the management and control of the system governed by this
8 article, and

9
10 has outstanding obligations payable in whole or in part ~~solely~~ from and secured by a lien on
11 and pledge of net revenues of the system; or

12
13 issues obligations that are payable in whole or in part ~~solely~~ from and secured by a lien on
14 and pledge of the net revenues of the system and that are approved by the attorney general.

15
16 Board of trustees; authorization; members

17
18 Sec. 2. A municipality by ordinance may transfer management and control of the electric
19 utility system to a ~~five-member~~ board of trustees appointed by the municipality's governing
20 body. The municipality by ordinance shall determine ~~set~~ the qualifications and number of
21 appointees for appointment to the board.

22
23
24 SECTION 35. (a) The Public Utility Commission of Texas and the comptroller of
25 public accounts shall conduct a joint study of the structure of the gross receipts tax imposed
26 under Section 1.351, Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas
27 Civil Statutes). The study must include an examination of the potential effect of deregulation
28 on the revenue generated by the tax during the next 10 years.

1 (b) The Public Utility Commission of Texas and the comptroller of public accounts
2 shall prepare a joint report detailing their findings. The report must include
3 recommendations on any problems or issues the commission and the comptroller determine
4 should be addressed by legislation or agency action.

5 (c) Not later than January 15, 1999, the Public Utility Commission of Texas and the
6 comptroller of public accounts shall submit the report required by Subsection (b) of this
7 section to the 76th Legislature.

8
9
10
11 SECTION 36. The following provisions of the Public Utility Regulatory Act of 1995
12 (Article 1446c-0, Vernon's Texas Civil Statutes), are repealed:

13 (1) Section 1.024;

14 (2) Section 1.025(c); and

15 (3) Section 1.052.

16
17 SECTION 37. This Act takes effect September 1, 1997, except that Section 22 of this
18 Act takes effect on the first date on which it may take effect under Section 39, Article III,
19 Texas Constitution.

20
21 SECTION 38. The importance of this legislation and the crowded condition of
22 the calendars in both houses create an emergency and an imperative public necessity that
23 the constitutional rule requiring bills to be read on three several days in each house to be
24 suspended, and this rule is hereby suspended, and that this Act take effect and be in force
25 according to its terms, and it is so enacted.